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The Great Tennessee Bubble

The practical economic aspects of the contemplated Federal power development project

BY WILL IRWIN

THE Muscle Shoals illusion has taken a new shot in the arm and passed from the paretic to the paranoiac. As first conceived—and actually passed through Congress—it involved an expenditure of a hundred and fifty million dollars. President Hoover vetoed the bill, and his cogent reasons seemed to appeal to the country. In a period of a taxpayers' revolution, that hundred and fifty millions looked like a lot of money for a doubtful enterprise. The Muscle Shoals proposal began to lose its drawing power. A stimulant was necessary. And daringly, the partisans of Muscle Shoals raised the ante from about one hundred and fifty millions to at least four hundred millions.

Franklin D. Roosevelt, then President-elect, probably acting at the moment as spokesman for his radical Western supporters, suggested in vague outline a new plan. It involved creation of an "economic unit" around Muscle Shoals as a nucleus—an earthly paradise of rich farms with their fertilizer manufactured at their very pasture-fences, of newly planted forests, of factories and flourishing towns. Such an enterprise, the tentative announcement told us, would put to work, almost immediately, 75,000 men; would eventually create jobs for 200,000 men; thus relieving unemployment by just so much and giving our economic system—perhaps—that jolt, that sudden stimu-

lus, which we really need for recovery.

MOST discussions of the Muscle Shoals question have been highly technical—filled with kilowatts and ohms and peak loads and other terms which are as Greek to that average citizen whose attention falls on electricity only when he pays his monthly bills. And perhaps the time has come to put this question into layman's language. This is the Muscle Shoals problem, therefore, as reduced to its lowest popular terms:

Begin with geography.

The Tennessee river, rising through the confluence of three tributaries in the Appalachians flows westward to the Mississippi through the state to which it gives a name, and empties into the Mississippi. Half way along, it takes a loop into northern Alabama. And there, for thirty miles, it falls by a series of swift rapids. These the old river boatmen named "Muscle Shoals" because it took muscle as well as skill to negotiate them.

From the time when men learned how to turn waterfall into electric power, experts have perceived that there were kilowatts in those rapids. Only their enthusiasm depended upon the season in which they viewed Muscle Shoals. Visit these rapids in February, and they look like El Dorado. Visit them in August "and the flow's a knitting needle!" remarks one expert. In short, the Tennessee has those fluctuations between floodwater and high water common to most southern rivers.

Now, a company which contracts and delivers electric power must maintain a steady load the year through. In circumstances like these, producers correct the vagaries of a fluctuating river by two processes; a great reservoir—necessarily expensive—or a steam plant. This waterslide, experts knew, was a valuable proposition—if rightly handled. The Alabama Power Company had long perceived that Muscle Shoals would be a useful part of its electric system. Before the war, it had spent a half million dollars in exploration work and for lands for the necessary dam.

ENTER now the second major factor in the Muscle Shoals problem.

Before the war, we imported from Chile most of the nitrates which we used both for explosives and fertilizer. Not only did the war bring unprecedented demand, but the sea routes to South America might at any time be broken. It became necessary to find a domestic supply. Economical extraction of nitrogen from the air—then a comparatively new process—involved large quantities of water-generated electricity. The government cast its eyes on Muscle Shoals. The company asked compensation for its half million dollars' worth of expenditure. Nothing doing! Accepting the inevitable, it made a patriotic gesture and sold the site for a dollar—paid by check. That introduces a comic episode, prelude to a larger and longer comedy. A publicity agent of the company, advertising its generosity, published a "cut" of this bit of paper—and was fined $500 for reproducing a government check!

The government had its eye, of course, on fertilizer, not power. And

in manufacturing fertilizer—naturally—the fluctuations of a temperamental southern river do not count so much. When the flow recedes, you simply shut down part of the plant and resume full-head when the river rises. Nevertheless—and on account of the emergency—it constructed a steam-plant for supplementary power. It began the great Wilson Dam. It threw together hastily, and at a cost of $80,000,000 two units of the great nitrate plant which would make us independent of Chile. Then, before a wheel had turned or a dynamo buzzed, except experimentally, the war came to an unexpected end.

And that gold ingot at Muscle Shoals turned at once into a gold brick.

In the fifteen ensuing years, came some technical changes which powerfully affect this problem of Muscle Shoals. At that period, it seemed that electricity generated from full and perpetual water-power could over any long space of years undersell electricity generated from coal. But inventors and experts were working on the steam problem. The result: today, one ton of coal, with modern equipment, produces nearly twice as many kilowatts as it did in 1918. This consideration is vital to an understanding of the Muscle Shoals problem. In 1918, we may have faced the danger that combinations of monopolists would grab our power sources. That danger has diminished, at least for many generations; since we favored Americans have hundreds of years of coal supply still in sight. Consciously or unconsciously, many advocates of the great, government-controlled Muscle Shoals enterprise are talking in terms of fifteen years ago, living in the last chapter.

But there it stood, half ready; the machinery idle in grease, the dam half finished. The government, perhaps wisely, threw in more good money and completed the dam. It could now generate electric power. But the nitrate plants never worked; and in their present shape never will. For after the war private enterprise took notice of our dependence on Chile, studied the problem, found improved and cheaper methods, and developed a domestic nitrate industry. Even in a war blockade, we stand ready now to produce all the nitrates we need either for explosives or fertilizer. And the $80,000,000 factories on the river-bank became gradually almost as obsolete as a 2-cylinder automobile or a single-shot Sharps rifle.

The government did the only sensible thing in the circumstances and arranged to lease its power-transmission plants to those local companies which supply light and power

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to that sparsely populated region. They use, in the months of low water, almost the full force of the flow over Wilson Dam. They supply the lack either from their own separate resources or from that supplementary steam plant beside the dam. On that last device they fall back as seldom as possible. For the plant is, of course, antiquated; and the long haul of coal creates additional expense. The Muscle Shoals assembly, as it stands, is a useful part of a light and power system, but only a part. One may judge its real value by the fact that when Henry Ford proposed a few years ago to take it off the government's hands, his tentative offers ran between five and ten million dollars.

However, the Muscle Shoals illusionists kept right on. If the Wilson Dam stood troubled by irregular flow, let us correct that by raising a large proposition to the dignity of a colossal proposition. On the tributary Clinch river, three hundred miles away, lies a spot suitable for a huge reservoir and known now as the "Cove creek site." Construct and dam this, and it would supplement the flow—not wholly; the steam plant must still exist; but partially. And it would increase greatly the total of power from the Muscle Shoals. They added in the Cove creek project.

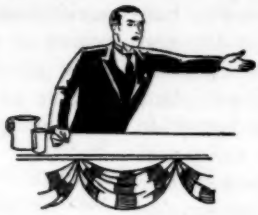
By now, the proposal came to—well, call it $150,000,000; a few millions more or less do not matter when you are viewing a paper scheme through rosy mists. This cost included a new, big dam at the Cove creek reservoir, an improved steam plant, rehabilitation of the obsolete nitrate plant. They wrapped this up with provisions to encourage those enlightened communities which kicked out the "Power Trust" and took control of their own electric power distribution, with other provisions assuring that jobs on the new project would be safe for the boys, and somehow got the whole package passed through Congress in 1931. President Hoover, being an engineer expertly advised by the army engineers, vetoed it, and it did not pass over his veto. He gave his reasons fully and publicly. Only one of these needs mention at this moment:

Where, he asked in effect, were the consumers?

Expounding that thought, our big cities, our industrial centres, were settled into their places by old economic and political laws, and none of them is near Muscle Shoals. If this fruitful waterslide lay in the Catskills, adjacent to the great New York centre of machine production and consumption, in the Illinois hills convenient to Chicago, in the Sierra near Los Angeles, Muscle Shoals would, indeed, be El Dorado.

But it doesn't.

The region immediately about it subsists by agriculture, has few manufactures and relatively low standards of consumption. The average voter, not being a specialist, was incapable of grasping the finer technical points in President Hoover's veto message. But everyone could understand the futility of producing goods when you had no customers. That argument had to be met. Very well, bring on consumers. And the new Muscle Shoals scheme—the pipe drawing freely—expanded from grandiose to



Why the Tennessee Bubble Is Being Blown by Politicians:

"THE Muscle Shoals bubble is being blown by politicians; and it has for them three great uses. First, and dearest always to the political heart, votes. Then—almost equally dear—Pork. And finally, a splendid chance to exploit a theory which is a campaign best seller in parts of the country."

colossal to cosmic, became a "new economic unit."

AMONG the minority reports of engineering experts was one perfectly sound exercise in idealistic mathematics. It showed the maximum possibilities of the whole Tennessee river for production of electric power, combined with a scheme for flood control; including eight big installations besides the one at Wilson Dam. The estimate of cost ran to $345,000,000. If you wanted to juggle the books a little, you could deduct $74,000,000 for improvement of navigation, and reach the more modest sum of $271,000,000. The Tyler plan, considered in the 1931 Muscle Shoals report, was more modest. It omitted navigation, included one less dam, and ran to $228,000,000. But neither of these plans comprises one feature which the true Muscle Shoals fanatic holds indispensable. This is a proposal for additional storages in the headwaters of the tributaries. The estimates of potential power, as given out, often include the effect of such storages. The cost has never been surveyed. But an expert who does not sit in on the big game estimates the construction of forty-six additional storage dams at $350,000,000. . . .

I wrote modestly a few paragraphs ago, that the estimated cost of the Muscle Shoals proposition had risen to four hundred millions. Oh well, I was just following example, and throwing figures about loosely. Make it five or six hundred millions and you'll be just as accurate. Also, there's the matter of bringing the eighty-million-dollar nitrate plant up to date. That will be only a minor item, however; not more than ten or twenty-five or maybe forty million dollars. When you're thinking in terms like these, that's small change.

THE less ambitious of these schemes involves 509,500 kilowatts, or 4,460,000,000 kilowatt

hours per year; of course, more than the population of the Tennessee valley and environs can use. Ah, yes, but we're going to move in a population! With the Muscle Shoals plant manufacturing nitrates, hard-scrabble farms along the Tennessee valley will blossom like the rose. There will be cheap, abundant power. Enterprising men will see the opportunity and start factories. Then we can add a scheme for reforesting such of the basin as our happy, new-prosperous farmers do not need for agriculture. Of course, that will not involve electric power, but it will help dress up the show. Finally, as the new government plan begins to put out of business the merely commercial power-and-light companies in Tennessee, Alabama, and vicinity, the government plants will employ more and more men at the generating stations. It will take—say—seventy-five thousand men to install this ambitious project. And when it is installed, and farmers begin to appreciate the beauty of cheap government fertilizer, and factory owners clamorous for good government power arrive on every train, the new project will support—well, let's say 200,000 people.

TRUE, sodden souls, reviewing this work of art, express craven doubts. They remark, for example, that we seem just now to be producing considerably more farm truck than we can consume or sell abroad, that modern factories are lying idle all over the country, that every engineer or electrician or stenographer or laborer put to work on the new Muscle Shoals electric plants will only displace an engineer or electrician or stenographer or laborer in the bourgeois plants now supplying light and power to that region of the South. Such small spirits, however, are incapable of perceiving the higher and more imaginative economics.

THEN there is the bookkeeping feature of the plan—one of its chief beauties. It is not a power enterprise alone, though that stands as the main point. It is a power, flood-control, and navigation enterprise.

As for flood control; the Tennessee is by no means one of our major problems, except as it affects the mighty, troublesome Mississippi. When in 1926 a combination of weather factors brought such a flood on the Mississippi as may not recur for three hundred years, a proposal to control the river by storage dams at headwaters of the tributaries drew much attention from the newspapers. I reported that disaster, and talked remedies with the best river engineers in the United States—which means the best in the world. One and all dismissed this plan because of its prohibitive expense and its probable ineffectiveness. The present Federal scheme for Mississippi control—revision of the levee plan, spillways, emergency reservoirs in the marshy lowlands—expresses the best engineering opinion on this problem. As for navigation, any really fruitful use of such rivers as the Tennessee must wait one or two more generations. The condition of our railroads shows that we are just now over-provided with transportation. But if the ship of state, tacking up Muscle Shoals, runs into snags, the losses and deficiencies can always be charged up to

navigation improvements and river-control. A little jugglery, and the inquisitive taxpayer cannot tell for years and years whether or no it is running at a profit.

THE scheme of finance is just as interesting, original, and—in a certain way—useful. Its proponents point out that the Muscle Shoals enterprise will stand in a splendid position to undersell privately owned companies because it has no dividends to pay, no interest charges to meet—no capital expenses whatever. That is true. If it happens to be somewhat efficiently managed, if its bookkeeping shows even mediocre ingenuity in juggling items, it can probably put the privately owned lines in the region out of business. But a little rudimentary thinking shows who will pay the capital expenses. Whether the three or four or six hundred million dollars come from the overburdened national Treasury or from the sale of bonds, it will be the grocer of Dubuque and the garage keeper of Sacramento and the school teacher of Minneapolis—the whole body of American taxpayers coming through with one more little bit in order to support the Great Tennessee Boom.

THE Muscle Shoals bubble is being blown by politicians; and it has for them three great uses. First, and dearest always to the political heart, votes. Then—almost equally dear—Pork. And finally, a splendid chance to exploit a theory which is a campaign best seller in parts of the country.

Taking these in order: the inhabitants of the Muscle Shoals region will naturally feel tenderly toward the party or faction which has handed them a four, five, or six hundred million dollar chunk of business. But as a political element, they shrink to insignificance beside the nation-wide agricultural vote. The politicians most interested in Muscle Shoals as a government proposition come from the corn and wheat belt. They have educated the farmer into believing that he is in the grip of a fertilizer trust. By means of the hidden-card financing and super-bookkeeping I have described above, they can probably undersell the ordinary, commercial nitrate producers—for a time. And they can see that the time does not pass until after one or two good, smashing elections.

AS for pork—here is pork in a gilded barrel! The Muscle Shoals bill of 1931 contained a curious provision which lays this intention wide open to view, and upon

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which President Hoover put his finger in his veto message. The whole enterprise—construction, electrical operation, and fertilizer manufacture alike—was to lie under control of three directors, "not more than two of whom shall be members of the same party."

Nothing about their qualifications as engineers, electrical experts, or chemists—only their politics. But a qualification still more curious followed this piece of self-revelation:

No man was to occupy one of these positions unless he professed "a belief in the feasibility" of this whole show.

This "test," applied to a coldly scientific enterprise, smacks quaintly of the medieval. "Profess," says the bill. Since mendacity is in these days easy and common, there is only one way to prove that the applicant for a position as director is not assuming belief in order to get a job—put a lie detector on him! But the intention of the 1931 act was perfectly plain; and doubtless it has not changed in two years. These three jobs were to serve as rewards to constituents of the men and factions in Congress who have been urging the Muscle Shoals proposal. And so it would go down through the list—engineers and electricians, chemists and fertilizer experts, contractors and subcontractors.

Tammany never conceived anything half so brilliant.

THIRD point: The men in Congress who have fought for ten years to "put Muscle Shoals on the map" have one common political motive—a battle to "smash the Power Trust."

Now, this writer does not profess to say whether there is a Power Trust or no. This is a complex world just now, and full of specialties. In a controversy over anything so technical, the layman must spend years investigating for himself or take his beliefs on authority. Here, the authorities on both sides are self-interested parties—the proponents interested in a political issue, the opponents in keeping their business and their profits. The hard-minded man must, under these circumstances, refuse to form a snap-judgment. But I do know this: if I stood convinced that a Power Trust was fastening its grip on our homes and factories, our sons and daughters, our legislators, and our institutions, I should look for some less clumsy and cracked weapon to fight its sinister intentions than this Muscle Shoals plan.

FINALLY, an electric power expert has produced of late some interesting figures parallel to the more modest of the Muscle Shoals proposals. That, remember, would cost $228,000,000. Subtract from this the cost of Wilson dam and the Sheffield steam plant, already built, and you have a total of about $176,000,000 for construction of the full plan. It would produce 509,500 kilowatts—at an operating and maintenance cost—including items that would be charged to "navigation and river control"—of $20,739,000 a year. As I have said, the efficiency of coal as a generator of electric power has grown amazingly in the past decade. Further, steam-generated power, in contrast to water-generated power, has what you might call mobility. You can locate your plants with rela-

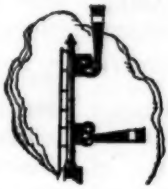
tion both to sources of coal supply and to centres of distribution.

"The order," said the expert as he sat down to work, "is for 509,000 kilowatts, steam-generated, delivered in Tennessee and northern Alabama. Very well."

And his results: Cost of installation, complete, $58,700,000. Yearly cost of operation and maintenance (including interest, taxes, and renewals) $12,190,000.

In short, private capital, working with steam, could install the same job for one third of the government price; could deliver the product for three fifths of the government price. . . .

Yes, this man is an interested party. It would be difficult to find a real expert on electrical power who isn't. But I hesitate to think that he would hazard his professional reputation on a set of faked estimates; especially since they must presently stand the searching test of a congressional investigation.



New Ventures in Public Utility Services

THE Polish railroads, government-owned, have been forced to reduce freight rates because of the increasing use of horses for transporting farm produce.

* *

APPLICATION of the proposed 6-hour work day to the railroads in the United States would cost the industry $630,000,000 increase in operating expenses over the 1930 rates.

* *

SEVENTY-SIX per cent of the commuters on the Lackawanna Railroad, in answer to a questionnaire, recently voted to retain the present system of smoking cars on trains; 16 per cent voted for the one non-smoking-car system, and 8 per cent voted for all-smoking-car trains.

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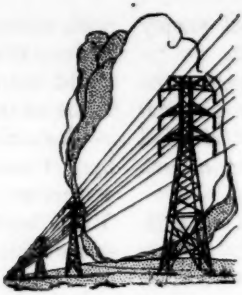
"THE *Flying Hamburger*," a new type of motor train that runs on rails and which has been hailed as the answer of the railroads to motor bus competition, made its first 178-mile run from Berlin to Hamburg, Germany, in two hours, twenty-one minutes; it attained a maximum speed of 96.3 miles an hour.

* *

THE dramatic stage advanced nearer to classification as a public utility with the recent enactment of a law by the Greek Parliament, which regulates the exercise of the theatrical profession; actors are now licensed by a regulatory body, divided into three classifications, and restricted in their dramatic activities.

* *

A NEW short-wave radio typewriter, operated in an office in New York, produced messages in an office nearly four miles away. This mode of communication involves not only transmission but secrecy. The message orginates in unscrambled form, gets itself scrambled for the duration of the trip, and resumes its first shape on arrival.



The Futility of "Yardsticks"

FOR MEASURING UTILITY COSTS

The common fallacy that they are either economically sound or legally permissible

By HENRY C. SPURR

One of the newest of the topics of conversation among the friends of the customers of utility companies is government "yardsticks" for measuring the reasonableness of electric rates of private companies.

"Yardstick" regulation must not be confused with "birch rod" regulation.

The birch rod is a government plant operating in competition with a private undertaking in order to force lower rates. The birch rod is a punitive weapon wielded by an indignant parent to bring a wayward child to its senses. The government would enter the field occupied by a private company and keep rates low by fighting for the business.

On the other hand, the yardstick would be set up more in conformity with the modern theory of bringing an erring offspring to time by persuasion rather than by switching or spanking. Government yardsticks would be something in the nature of laboratories or bureaus of standards to show what the service ought to be produced for. A yardstick is something by which to measure. Power generated and distributed by a government plant in a certain territory would be a measuring rule with which the rates of private companies could be compared. This would not necessarily mean competition with private plants. Indeed, there ought to be no competition if the government plant is to operate under ideal conditions. It should be operated exclusively in a given territory.

The troublesome objection to this idea, however, is that it appears to be contrary to law and economics. From a practical standpoint, if government plants were established merely to serve as yardsticks, they would be all dressed up with no place to go. These yardsticks would be of no use to the commissions. If the commissions tried to apply such a measuring de-

vice, the courts would promptly stop them.

COMPARING the rates of private plants with certain government utilities is a favorite argument of the advocates of government ownership. They will probably go on using it until doomsday, but its fallacy has often been pointed out in litigated rate cases. Let us examine a few of these which have been decided in the last ten years.

The well-established rule is that yardsticks are of no value whatsoever unless the operating conditions of plants compared are shown to be the same.[1]

The Montana commission has held that unless all the conditions respecting service in both localities are exhibited, surface comparisons of rates that obtain in different localities mean nothing; and that when all conditions which obtain in each locality are shown, the futility of such a course is generally made apparent.[2]

Application of a yardstick is neither fair, accurate, nor proper unless there be an identity of service conditions between the utilities compared.[3]

In one case the Indiana commission held that the unreasonableness of the minimum charge for water for private fire protection was not proven by citing lower rates for similar service when no attempt was made to show whether such service was furnished under like or similar conditions or that the general rate structure where such lower rates were in force was not made with reference to such special fire protection rates.[4]

Following this rule the Missouri commission held that rates would not be declared unreasonable simply by comparison with tariffs of companies in adjoining territory, wholly disregarding any consideration of the cost of similar service in different communities, the property employed in rendering the service, amounts fixed for depreciation and return, and other factors necessary to be taken into account in fixing of rates.[5] So the refusal of the same commission to admit testimony tending to compare gas rates in another community with those under question, in the absence of evidence showing that operating conditions in the two localities were similar, was sustained on appeal.[6]

In a gas rate case in Georgia, counsel for Atlanta and the Atlanta Federation of Trades insisted that the gas rate in Atlanta should be no higher than in Washington, D. C., or $1 per thousand cubic feet. The record did not show whether the conditions surrounding the manufacture, sale, and distribution of gas at Washington, D. C., was comparable with Atlanta. The commission said it knew by ex-

[1] Jacobs, Malcolm & Burtt *v.* Berkeley Transp. Co. (Cal. 1924) P.U.R.1925B, 64; Loogootee *v.* Loogootee Water Co. (Ind.) P.U.R.1926E, 857; Chicago & E. I. R. Co. *v.* Commerce Commission ex rel. Hoopeston Grain & Coal Co. (1930) 341 Ill. 277, 173 N. E. 380; Sullivan *v.* Hingham Water Co. (Mass. 1925) P.U.R.1926C, 371; *Re* Morris (N. J. 1924) P.U.R.1925A, 142; *Re* Otter Tail Power Co. (N. D.) P.U.R.1925E, 407; *Re* Otter Tail Power Co. (N. D.) P.U.R. 1925E, 641; *Re* Grafton Rural Teleph. Co. (N. D. 1924) P.U.R.1925A, 143.

[2] Public Service Commission *v.* Flathead Valley Electric Co. (Mont.) P.U.R.1926C, 822.

[3] *Re* Mystic Valley Water Co. (Conn.) P.U.R.1925D, 385.

[4] Terre Haute Paper Co. *v.* Terre Haute Water Works Co. (Ind.) P.U.R.1924B, 580.

[5] Makin *v.* Public Service Commission (Mo.) P.U.R.1928E, 290.

[6] State ex rel. St. Louis *v.* Public Service Commission (1931) (Mo. Sup. Ct.) P.U.R. 1932A, 305.

perience that the gas rates in one community are not comparable with gas rates in another community, unless all conditions surrounding the manufacture, sale, and distribution are the same; that where gas was sold in large volumes it could be produced and sold at a lower rate than where produced and sold in less volume, for the reason that the cost of production of 1,000 cubic feet tends to decrease with volume and the cost of distribution and sale increase only slightly with the increased volume.[7]

THE *proviso* that yardsticks, even to be of any aid in rate making, require similarity between the plants compared, practically eliminates comparisons from being of any value whatsoever in rate making. It would be hard to find two private companies as similar as two peas, and certainly government and private plants would not be likely to operate under the same conditions.

Suppose that a government plant were set up at Muscle Shoals. Where would there be a private plant enough like it to make the government plant rates a yardstick for determining the reasonableness of the rates of the private plant? No court or commission would accept such a comparison.

Even if plants of the same size could be found, this would not be enough to make a government yardstick of any use. The Indiana commission said, for example, that only when two towns or two communities are of exactly the same size, have exactly the same investment, the same number of service lines, the same number of consumers, the same demand, and in fact when all other conditions are exactly similar, is there any basis for comparison.[8]

Manifestly, the rates of a small electric plant could not be said to be too high by using a government plant of the size of the proposed Muscle Shoals development as a yardstick. It has been held that a complaint that rates of a small electric utility serving a single municipality cannot be said to be unreasonably high because of evidence that a large utility serving numerous municipalities from a single generating plant charges lower rates.[9]

IF we are to have a number of government yardsticks—several established by the Federal government—together with supplementary yardsticks set up by states and municipalities, it is not very probable that these yardsticks would be uniform. If there is one thing that is required of a meas-

[7] *Re* Georgia Power Co. (Ga. 1928) P.U.R. 1929B, 309.

[8] Windfall *v.* Traction Light & P. Co. (Ind. 1923) P.U.R.1924C, 129.

[9] Thompson *v.* Hightstown Electric Light & P. Co. (N. J.) P.U.R.1924E, 253.

¶ "THE *well-established rule is that yardsticks are of no value whatsoever unless the operating conditions of plants compared are shown to be the same. . . . Manifestly, the rates of a small electric plant could not be said to be too high by using a government plant of the size of the proposed Muscle Shoals development as a yardstick.*"

uring device more than another, it is uniformity. The trouble which varying yardsticks would lead to is well set out in a Maryland street railway fare case in which the commission said:

> "Many comparisons have been made, before, during, and since the hearing, between the rates of fare paid in Baltimore and those paid in other cities. No just conclusions can be drawn from such comparisons because conditions in no two cities are fairly comparable. New York has a 5-cent fare, and incidentally the cost of giving a ride on the New York subways is estimated to be 7.31 cents, the taxpayers and investors losing the difference above the 5-cent rate. Cleveland has a 6-cent fare, with a charge for transfers which yields more than a million dollars a year in revenue. Baltimore has a 7-cent fare, and pays more than a million dollars a year out of it for the support of the parks. Wilmington has an 8-cent fare, Cincinnati has one of 9 cents. Boston and Pittsburgh have 10-cent fares. Chicago has a 10-cent cash fare on its elevated and a 7-cent cash fare on its surface lines, and so on. The fact that considerably more than 100 cities throughout the country have a base fare of 10 cents is no reason why Baltimore should have a 10-cent fare any more than that these cities should have the rate prevailing here, and the fact that other cities have a fare of 5 cents is no reason why Baltimore should have it." [10]

So the yardstick idea keeps encountering the obstacle of dissimilarity of operating conditions. This is an obstruction which the out-and-out advocates of government ownership constantly disregard. They are persistently trying to prove their case by comparing rates of private utilities with those of specified government plants which may or may not be operating under like conditions.

It is astonishing how often the yardstick method of determining reasonableness is urged before the commissions, notwithstanding its unsoundness has been exposed again and again. The New York commission once alluded to this fact; the commission said:

> "It may be stated as a fact that the lighting rates of one city cannot be determined *per se* by a comparison with the rates of other cities. That idea has been so often introduced in rate cases, only to be rejected, that it does not justify discussion. It is useless to make comparisons unless all the elements that enter into the problem are of a comparable nature. Local ordinances, topography, prices of supplies, labor rates, are all facts that affect costs, and unless the costs of doing business are the same, comparisons are futile. Time and again this same argument has been used in regard to New York city's gas rates with results that should afford no encouragement to its protagonists." [11]

It is not a matter of surprise, therefore, that the government yardstick idea should be urged seriously in spite of plenty of commission and court decisions pointing out its fallacy. Setting up government plants to serve as yardsticks, if that were the real purpose of their establishment, would be a waste of the people's money.

Attempts have actually been made to use government yardsticks for the purpose suggested, but without success.

In a water case a chart showing water rates in other cities, some being owned and operated by municipalities, was offered in evidence as a basis of comparison with rates fixed by the commission. It was held inadmissible in the absence of a showing that the other cities were comparable in size, operating conditions, and other economic factors with the municipalities served by the utility whose rates were fixed.[12]

[10] *Re* United R. & Electric Co. (Md.) P.U.R.1924D, 713.

[11] *Re* Consolidated Gas Co. (N. Y.) P.U.R. 1928E, 19.

[12] Public Utility Comrs. *v.* Elizabethtown Water Co. 43 F. (2d) 478, P.U.R.1930E, 373.

To Substitute "Yardstick" Regulation for Commission Regulation Would Be Contrary to Law



"ANY attempt to substitute government yardsticks for commission methods of determining reasonableness of rates would be contrary to law. Whether one likes it or not, the Constitution, according to the Supreme Court, forbids confiscation of utility property. The companies are entitled to a reasonable return on the present fair value of their property. In order to know whether they are receiving such a return the affairs of individual companies must be examined."

In an Indiana case considerable was said at the hearing about the rural lines of a municipal plant. The commission said it was aware of the fact that the municipal energy rate for small rural customers was lower than the rate of the private company whose rates were involved. The comparison, however, the commission held to be meaningless unless all factors, including the cost of the money, the taxes, the financing of the lines, the standards of construction, and the ability to maintain service, were taken into consideration.[13]

In an Oregon case testimony was introduced showing comparisons of fares charged by the Portland Street Railway system and other street railway systems, municipally operated and otherwise, in a small number of cities in the United States. The commission held that as only a small number of cities were used in comparison, and in many instances the exact conditions surrounding operation in those cities were not available, the evidence submitted could not be considered controlling.[14]

ANY attempt to substitute government yardsticks for commission methods of determining reasonableness of rates would be contrary to law. Whether one likes it or not, the Constitution, according to the Supreme Court, forbids confiscation of utility property. The companies are entitled to a reasonable return on the present fair value of their property. In order to know whether they are receiving such a return the affairs of individual companies must be examined. Enough has already been said to indicate that operating conditions of different companies would very seldom be so much alike that reasonableness of the rates of one company could be fixed by any yardstick method of comparison. The commission method of determining reasonableness is to investigate the operating conditions of individual companies. That is the only scientific and fair method.

[13] Anderson *v.* Moran Electric Light & P. Co. (Ind.) P.U.R.1929C, 118.

[14] Housewives Council *v.* Portland R. Light & P. Co. (Or. 1925) P.U.R.1926A, 53.

It is the only one that will stand the test of law or economics.

So it has been held that a commission finding relating to the reasonableness of rates based not upon the evidence submitted but upon its own comparison of these rates with rates charged by other companies is erroneous.[15]

And the Montana commission has said that under the law of the land rates are not made by comparison and that the rule is that the owner of a well-conceived public utility plant, rendering reasonably adequate service, is entitled to earn over and above operating expenses and a reasonable allowance for depreciation, a fair rate of return upon the present fair value of his property, used and useful, devoted to the public service.[16]

As Geiger, Federal district judge, has said:

> "Each utility in each community is entitled to a valuation upon evidence legally pertinent to its property; not merely, in difficult cases, to a referendum to other cities. There can be no need of rules or principles guiding commissions in valuations of property, if such considerations may dominate *evidence* of value in the particular case." [17]

THE yardstick proposition is popular because of the failure of the public to understand what it means. Superficially it looks all right, but it has led to much mischief. This has been well pointed out by the Montana commission, which has said:

> "As a matter of practical administration the superficial comparison of rates in one locality with rates in another locality has been productive of no small amount of mischief in that it breeds utterly unfounded suspicions of favoritism or other unfair advantage. Not knowing the elements on which a given schedule rests, the inhabitants of a community where higher rates are in force, conclude that lower rates existing in a community externally similar are the result of causes having no relation to the business of rate making. Such unfounded and illogical inferences tend to promote ill feeling between communities and to cast improper reflections upon the whole regulatory system. We trust that it will be unnecessary hereafter to point out the fallacies of the bare comparisons of tariff sheets or rate schedules in public utility cases." [18]

THERE is no difference in principle between a government yardstick and a private utility yardstick for determining the reasonableness of utility rates. Indeed, the objection to the government yardstick would be greater than that to the private yardstick because the government plant would be apt to operate under more favorable circumstances than the private plants. There are a variety of discriminatory favors which the government plants enjoy. It has even been suggested that in sales of electric current generated by a government plant, municipal plants be favored over private plants. This would be an added disqualification for the use of the municipal plant yardstick. The unsoundness as well as the unfairness of such a proposal should be manifest upon the briefest reflection. There can be no possible yardstick method of determining the reasonableness of rates of all varieties and sizes of electrical utilities throughout the country. Rate making is a concrete company or territory proposition.

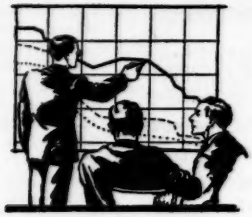
Competition between government and private plants is a different thing.

[15] Gallaher *v.* Southern N. E. Teleph. Co. (1923) 99 Conn. 282, P.U.R.1924A, 279.

[16] Polson *v.* Public Utilities Consol. Corp. (Mont.) P.U.R.1929E, 557.

[17] Ashland Water Co. *v.* Wisconsin R. Commission (1925) 7 F. (2d) 924, P.U.R. 1926B, 293.

[18] Benjamin *v.* Great Northern Utilities Co. (Mont. 1923) P.U.R.1924B, 705.



Why Utility Rates Don't Go Down with Commodity Prices

The practical economic as well as the legal factors that explain the spread between—(for example)—the present fluctuations between the unregulated cost of wheat and the regulated cost of electricity.

By I. WADE COFFMAN
CHAIRMAN, PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

At the outset of an examination of the relationship of the level of prevailing prices of agricultural and manufactured products with the level of charges for public utility service, even those who make no professions as experts in the field of economics are overwhelmed with the fact, of common knowledge, that every known law of economics and of financial and fiscal behavior which is presumed to control the price of general commodities, and upon which the men and women of this country have counted for their material happiness, appears to have broken down.

The magnitude of the demoralization in commodity prices and of the economic destruction which has visited the country as a result of the apparent failure of the economic principles which govern them, as they have been commonly understood, may be measured by the frantic efforts which have been made by economists and statesmen to discover the cause of our economic ills and to prescribe remedies or temporary palliatives. No one has yet discovered the cause of the disastrous fall in commodity prices or proposed with confidence a means of stabilizing them at a higher level. The Federal government, with no financial resources except the power of taxation, has for the first time in the history of organized society on the western hemisphere pledged the national credit to the tune of billions of dollars in loans to banks, savings institutions, railroads, states, and cities, in a futile attempt to stop the downward trend of prices. Notwithstanding the unusual and extraordinary means adopted by the government, with the approval of all the people, and despite the efforts of countless financial and civic organizations to stem the flood of declining prices, they have contin-

ued to fall lower and lower until in many lines the producer or manufacturer cannot market his goods for enough to pay the cost of production.

It is a particularly difficult task, therefore, to ascertain the relation of the level of present chaotic commodity prices with that for public utility service.

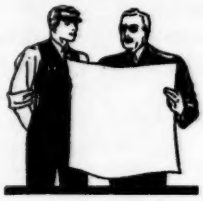
In normal times the relationship might be traced more easily, for the fundamental basis of the prices which prevail in any successful industry is, of course, the cost of production. That cost in unregulated industry may be compared with the cost of rendering the service in the regulated public utility field under normal economic conditions.

The similarity of the basis of prevailing prices in unregulated productive industry with the basis of charges for regulated public utility service ends with the factor of the cost of production in the one case and of the cost of rendering the service in the other, even in a period at which the commonly recognized laws of economics are controlling. There can be little relationship between them when economic anarchy prevails in the general commodity field to the point where the produce of the farm or the product of the factory is sold for less than the cost of production. That condition will destroy agriculture and industry; it will overturn what is left of the credit and confidence of the people; it will impoverish labor and wreck organized society. Thousands of banks have already failed, with the loss of their entire fortunes to hundreds of thousands of our people; factories and mills have shut down, throwing millions of men and women out of employment; thousands of farms have been abandoned. And all this has taken place because of the failure of the products of farm and factory and shop and office to command prices to cover the cost of producing and marketing them.

Moreover, the state, in the enforcement of the great body of social legislation known as public utility regulatory laws, has placed restrictions on public service businesses while private enterprise is free from such restrictions.

For instance, the state of Michigan has no law, and it is inherently impotent to pass a law, to compel Henry Ford to sell his automobile at not more than the legitimate cost of producing it; therefore, Mr. Ford has not been forbidden to amass one of the largest fortunes of modern times out of the profits of his factory. He can close his factory whenever he wishes, and the public must wait until a certain well-advertised day to be supplied with one of his cars. But the state of Michigan does have a law which compels the concern that furnishes water, heat, light, power, communication, or transportation service to the automobile manufacturer, and to the humblest of his employees, to furnish that service at the legitimate cost of rendering it. That concern is not permitted to shut down its plant; it must be ready to serve the factory and the home of the factory employee every day in the year and every hour in the day.

This condition illustrates roughly the dissimilarity between the operation of a producing business and the



In a Period of Crisis, Commodity Prices Are Misleading as Standards of Comparison

"UTILITY rates are, of course, directly influenced by commodity prices in so far as the use of commodities enters into the costs of operating a utility plant, but, for the purposes of comparison as a measure of rates, general commodity prices in a period of financial and industrial crisis tend to be misleading."

rendering of public utility service, and points out the essential character of the relations of the unregulated producer of commodities to the public as compared with the utility's relations and obligations to the public. The situation may be summed up by stating the following general propositions:

(1) Common-sense economic laws require that the price of a commodity or the charge for a service must be as great as the cost of producing the commodity or rendering the service, if the production of the commodity is to continue or the service continue to be rendered.

(2) The state has no power to regulate the price of general commodities, and, therefore, does not fix the maximum charge which the producer may demand for his product. The excess of the sale price over the cost of production goes to the pocket of the producer to tide his business over the shoals of moderate depression.

(3) The state limits the price of public utility service at the legitimate cost of rendering such service, and compels the utility to supply the public at not to exceed the cost thereof.

ONE governmental principle remains to be mentioned: Under our system of constitutional government, whatever may be our sympathies with those of our people who in this period of financial distress find it hard to meet their monthly bills for water, fuel, light, transportation, or communication service, we are faced with the insurmountable barrier of due process of law when we attempt to reduce charges for such services to a point lower than the cost of supplying them. State regulatory laws compel a utility concern to continue to render adequate service to the entire community it professes to serve, and they limit the charges to be made

for such service; but with all its power to make laws and enforce them, the state is utterly without authority to compel the rendering of a service for less than cost.

Lest there be some confusion from the frequent use in this paper of the term "the cost of rendering service," let it be pointed out that the courts have time after time defined that cost to include reasonable operating expenses, a reasonable sum to repay the utility for that portion of its plant worn out in rendering the service, the amount laid out in taxes, and a just compensation for the use of its property by the public.

When the state has limited the price of a service to the sum of these items, it can go no further in the reduction of public utility charges. No more misleading statement on the subject of state regulation is made than the occasional declaration of the uninformed that the state guarantees the utility the payment of all the items included in the cost of rendering utility service. The law limits the charge to that cost; it holds out no guaranty of the payment of it. The law limits interest rates to 6 per cent a year, but it does not guarantee that a bank will earn its operating charges, including depreciation on its physical property, taxes, and a sum sufficient to pay dividends.

A STUDY of the relationship of commodity prices to utility rates, therefore, discloses essential differences in the nature of the two levels. The state does not attempt to limit prices in private industry. In periods of prosperity, society manifests little concern over commodity prices; in times of financial distress it devolves upon our citizenship, our statesmen, and our economists to do everything possible to increase the price of commodities. On the other hand, and because of the public nature of the enterprise, the state limits the price of utility service in prosperous times as in times of depression. The agents of the state must be vigilant in seeing that the charge for a service is no more than its cost, but, under our system of society and our plan of government, the state can go no further than to enforce such limitation. Indeed, to do so would only serve to deprive the people of public utility service eventually.

Except in those instances in which the public owns and operates a utility plant and the excess of operating costs over revenues may be made up from the pockets of the taxpayers, is it possible for the needs of the public for necessary utility service to be supplied at prices as low as general commodity prices when the latter have fallen below legitimate costs.

UTILITY rates are, of course, directly influenced by commodity prices in so far as the use of commodities enter into the costs of operating a utility plant, but, for the purposes of comparison as a measure of rates, general commodity prices in a period of financial and industrial crisis tend to be misleading. Particularly is this true when the unwritten, but nevertheless potent laws controlling commodity prices have become inoperative, while we are obliged to maintain, so long as our present Constitutions exist, the guaranties we have erected for the protection of the public.



The Actual Taxpayers in "Taxless" Towns

Assuming that the facts submitted in support of the contentions of proponents of a tax-free community are authentic, who actually pays in the revenue required to run the town? If the burden is not borne by the municipal ratepayer, who does bear it? Here is one answer to an old problem in practical economics.

By C. WOODY THOMPSON
ASSISTANT PROFESSOR OF ECONOMICS, UNIVERSITY OF IOWA

WYOMING TOWN GOES TAXLESS

Torrington, Wyo. Feb. 11 (AP)—Torrington's gone taxless! The budget has been so pared that not one cent of taxes will be levied. Operating expenses will be made from the city light and water systems.[1]

THE above newspaper dispatch [1] raises this question in the mind of the writer:

May not the situation of the taxless town point to one practical way of reducing the tax burden of the local citizenry?

In this period of propaganda about the problem of taxation, may not one way to reduce taxes be to substitute for the city levy the profits earned by the local municipal light and water plants?

Perhaps the answer may be found in the reply to another question:

Is it sound economically to replace a tax levy by the profits of municipal utility operation?

THIS article is not particularly concerned about the so-called "facts" of the case. Reams and reams have been written on the facts, all of which apparently sustain the particular prepossessions of the various writers. Several towns in the United States have acquired some degree of fame in the battles of words and logic over their relative taxlessness. Among the more prominent of these (chosen at random) are Chanute, Colby, Coffeyville, and Belleville, in Kansas; Ponca City, Norman, Newkirk, Mangum, Altus, Kaw City, Blackwell, Mooreland, Seminole, Yale, Woodward, Pawhuska, Edmond, and Cushing in Oklahoma; Orleans, Vermont; Albany, Georgia; South River, New Jersey; Spooner, Wisconsin, and Hawarden, Iowa. This particular article is but an analysis of the economic sound-

[1] Taken from the Iowa City, Iowa, *Press-Citizen*, February 11, 1932.

ness of facts which are assumed.[2]

A "TAXLESS town" may be defined as one which has no city tax levy, using in place of the usual tax revenue the profits of its municipal utility plant or plants. The tax levy under the general property tax is a composite of levies made by various taxing bodies, of which the city is one. The city, county, and state governments; the park district, the sanitary district, and the school district each share in the tax paid by the town property owner. In short, the general rate of property taxation is the sum of the rates (on a millage basis) of the taxing bodies serving the particular property taxed.

It should be obvious that it is proper to call any city a taxless one if the city levy is dispensed with. This city levy upon a citizen's property is the only levy for which the city government is responsible, and thus in a very correct sense a city is taxless if the city authorities get the income for the city exclusively from the profits of the city's utilities. Of course, by waiving the legal problem involved, it might well be that these profits could be large enough to pay the general levy against all property owners within the taxless city's limits.[3] This likewise would be a "taxless town" as certainly as the elimination of the city levy alone justifies the title.

Some critics of the taxless town have tried to make much of the fact that these towns do have other levies than the city levy. Such criticism is unfair and is obviously based upon a literal interpretation of the word "taxless." If the city fathers had a voice in the levies of the many other taxing jurisdictions, such criticisms as this might be well deserved. It is known, however, that such is not the case; that the city administration cannot be charged with the acts of these other independent taxing groups.

FOR present purposes, the definition of profits conforms to the best accounting practice for public utilities.

The profit of a plant is that residual amount remaining after all operating expenses, depreciation, amortization (if any), and interest upon the bonded indebtedness have been deducted from the operating income of the plant. In case the plant is debt free, it must be remembered that this profit is partly return upon the investment of the citizens. Any "profit" which is obtained by slighting these items is not a profit in the proper sense of the word, and the claimed sum should be corrected by the amount of the slight.

One of the major problems involved in verifying the claims of a taxless town is the accurate determination of the municipal plant income and expense. As one plant manager has explained, the moneys collected for service were placed in the same jackpot along with the dog taxes and license fees, and disbursed as the city fathers saw fit. Such a system as this is the acme of poor business practice.

[2] One of the more recent reports is found in the *Chicago Tribune*, of July 20, 1932, which relates the success of Ponca City, Oklahoma, in replacing the city levy by municipal plant profits.

[3] The author recognizes that there are limits to this statement that the entire property tax could be paid from the plant profits. These profits are the excess of income over expenses—thus recouped from rates. It could well be that rates might be of necessity so high (higher than the traffic will bear) and, therefore, fail to return these needed profits. This, then, "kills the goose that laid the golden egg."

It is well-nigh impossible to strike an accurate profit and loss statement for the utility plant, and even if the total of cash income and outgo were to be ascertained, the difference between them would in no sense be profit. Many adjustments, especially for depreciation and interest upon the bonded indebtedness of the city for the plant, must be made, and until such is done, any item claimed as plant profit is meaningless. Nothing can be more shortsided than to gain large present "profits" at the expense of inadequate plant maintenance and depreciation. In the end this carelessness will cost more than the savings made initially.

SINCE the municipally owned plant is tax free, it ought to pay as profits an amount at least equivalent to its tax exemption. Casual reflection will show that one of the consequences of public enterprise is that for each piece of property acquired by government, that piece of property is removed from the tax rolls of the city and state. As a result, the tax base is reduced by the extent of the proprietary functions of government, thereby tending to raise the individual tax burden on owners of private property unless the public enterprise contributes profits to the local government at least equal to the taxes a comparable private business would have paid. And in this event, only a replacement of the city levy would be represented by these profits, leaving upon the balance of the private property the burden of the other governmental levies which would have been borne by this public industry had it been privately owned and operated. Therefore, equity should require every proprietary function of government to earn profits at least equal to the exemption from city levies.

THE only acceptable theory by which any tax should be levied is the ability of the taxpayer to pay. Any other yardstick for tax collection, barring the use of the taxing power to protect the citizen from inferior or harmful articles of consumption, is unjust in its effect. The present modified sales tax of the Federal government is illustrative of this unfairness.

The general property tax, the major source of local and state revenues in the majority of the states, conforms to the principle of ability to pay only indifferently. It has many theoretical and practical handicaps, most of which cannot be eliminated. Nevertheless this tax is the most widely used tax in the United States, and is so firmly entrenched in our tax system that we will use it as our yard-



¶ "WERE *the city levy to be replaced by the profits of the municipal electric light plant, the industrial users who now pay a sizable part of the general property tax would go practically scot-free of contribution toward the cost of the city administration. A better illustration of unjust taxation could not be found, because the small shops and residences would bear almost all the burden of government.*"

stick by which to measure the justice of the substitution of utility profits for taxes.

It may be said, parenthetically, that the only practical type of tax which conforms to the ability principle is the income tax such as is used by the Federal government and by some of the states. As taxes, unless they are confiscatory, are paid out of income, why not make income received the basis of tax contribution? The inequalities of the general property tax have been brought to light in the present depression, and should serve to make our citizenry more tax conscious. The only fear is that this tax consciousness is being capitalized upon by leaders for tax reform whose motives are very ulterior and thereby questionable.

THE problem involved in raising city revenues through a light or water rate may be approached from either the theoretical or the practical point of view.

First, consider the theoretical approach.

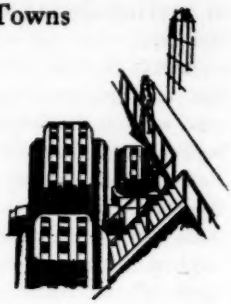
In order that this method may be sound, it must be shown that each user of utility service from the city-owned plant consumes amounts of energy or water in proportion to his property values. In other words, if householder A has property worth $1,000 and householder B property worth $2,000, to be equitable, B's water or light bill must be twice that of A's, because B's tax bill under a city levy would be twice as large (assuming a fair assessment).[4] In the second place, to substitute profits for city taxes, every taxpayer under the usual circumstances should also be a customer of the city plant. If these two assumptions be sustained by a statistical analysis, and following our definition of what constitutes a profit, then there can be no major criticism of the theory of substituting the profits of municipal utilities for a city tax levy.

It will be urged that such a tax substitute will shift the burden of the levy from the owners of rented property to the tenant. But this is fallacious, as the tenant pays the tax in the long run under either method of city financing. In any town where the shift is made from a city tax levy to municipal tax profits as the revenue for the local governments, the rents of property will shortly be reduced as a result of competition by the amount of the tax decrease. Instead, the tenant will now pay higher rates for service and a lower rent. Again, the assumption is made by us that property values and utility use vary directly with each other.

A CITY tax levy is a direct tax; whereas this tax substitute is an indirect tax. In general, a direct tax is to be preferred to an indirect tax, largely on the grounds that the payer is fully conscious of the burden of the tax. On the other hand, an indirect tax is often easier to collect, especially if it be rather burdensome, and for this reason, the tax substitute may be preferable. This second point is not as important as the question of directness; therefore, the direct tax (or city levy) is preferable to an indirect tax, and in the absence of other factors should decide the issue at hand. As a matter of fact, however, the question

[4] The problem of the time of use of electricity is omitted, not as unimportant, but as unnecessarily complicating the problem.

Whence the Revenue in "Taxless" Towns Actually Comes



"WHETHER city revenues are gained from municipal utility profits or tax levies, they come out of the pocketbooks of the local citizenry. Unless it can be demonstrated that the utility rates in the taxless town are something less than the rates of a comparable private plant plus the city levy, the hope of gaining a practical tax reduction is illusory."

of directness is only of several factors to be considered.

If, upon investigation, the facts in any town considering the substitution of utility profits for city taxes, coincide with these propositions (and barring the question of the relative directness of these methods), it may be concluded that the arguments for the "taxless town" are valid. How likely is this coincidence of fact and theory?

That is the next problem.

As a matter of practical application, the problem of the "taxless town" has certain complications.

In the first place, there are many towns and cities in which a sizable minority of the citizens may not use utility service and would thus escape contribution to the city government. This is likely in the case of water service in the small town and in the case of electricity service in the larger place. In the small town or village, the individual well is not uncommon, and in many of the tenement districts of industrial towns the electric service is often conspicuous by its absence. Either situation violates the theoretical premise of universality of service as one of the conditions essential to justify the taxless town.

In the second place, there may be some doubt that the householder will use service proportionally to his ability to pay taxes. Nothing short of a thorough check and correlation of the tax rolls and annual utility bills for every house in a town will suffice to resolve this doubt. From a deductive standpoint, it seems probable that the larger the city the less likely will utility use and tax-paying ability correlate. This conclusion is especially unimpeachable for water service. Except for lawn sprinkling uses, it is conceivable that a large family "behind the yards" might use as much water as one on the "gold coast."

In the case of electricity service in the large city, this probability of lack of correlation between utility use and tax-paying ability is made more certain by the low rates offered to large power and off-peak users. It is a well-known principle of rate making that such service, because of its competitive nature, is sold for but slightly more than the special costs incurred. In such cases were the city levy to be

replaced by the profits of the electric light plant, the industrial users who now pay a sizable part of the general property tax, would go practically scot-free of contribution toward the cost of the city administration. A better illustration of unjust taxation could not be found, because the small shops and residences would bear almost all the burden of government. Such a result violates our American sense of fair dealings.

On the other hand, as a practical problem of dollars and cents, might not the clerical force of the light or water plant do the job of tax collection, through the light or water rate, more cheaply than the county agencies do it?

In other words, may not an economy in government be effected by consolidating the two offices, one for utility payments and the other for tax receipts, into one?

This question is easier asked than answered. In the first place, the tax-collecting agency is the county treasurer's office which collects for many taxing bodies. Here is a question of joint cost, and removing the collection of the city levy alone from the duties of the county treasurer might not reduce his office force. In the second place, since the local utility in a taxless town is municipally owned, it might be doubted by many that the office force of the utility would be any more efficient than other governmental offices. Such an accusation, anyway, could be made by the advocates of private ownership. Suffice it to say, that no marked evidence has been found of inefficiency in the clerical forces of the municipal plants visited in the survey on which this article is based. With the present lack of facts on the problem, dependable conclusions are not possible.

One other point may be advanced by the advocates of the taxless town. The injustices and inequalities of the general property tax are too notorious to need demonstration. The inability of the best of tax assessors to estimate the "fair market value" of such diverse properties as railroads, banks, grocery stores, and homes is productive of immeasurable discrimination. Then to add to the annals of injustice consider the concealment of many items of personal property which are by law taxable.

In the light of these facts, can the utility rate as a tax substitute be more unjust or discriminatory? Without an investigation, it is reasonable to assume that the advocates of the taxless town are probably correct in their contention.

Notice, however, that the argument here turns on the assumption that the general property tax continues as the corner stone of our local tax system. But may not the assumption be questionable? Is it too much to hope that we shall sooner or later acquire sufficient political acumen to replace this worst of all tax devices by some other and better one? If this occurs most of the force of this argument for the taxless town will evaporate.

For the small town, the substitution of municipal utility profits for a city tax levy is theoretically and practically defensible. In several such places inspected it was found that almost every house connected to the utility system. With the absence of in-

¶ "LET *no person suffer under the illusion that, for the city as a whole, the elimination of the city tax levy by (municipal) utility profits reduces the tax burden. The effect of this substitution is to reduce the tax bill proper, but to increase the utility rate. For the town as a whole, the decrease in the one will be offset by the increase in the other.*"

dustry (a characteristic of the small town), one rate suffices for all types of service, thereby eliminating the possibility of discrimination against the residential users. In many of these small taxless towns, the question of the correlation between utility use and property values is not vital because they have neither extreme wealth nor dire poverty. Coupled with the fact that the citizens of these places are satisfied with their taxlessness, it may be concluded that any small town which has a municipal light or water plant may, without marked injustice to the rank and file of its citizens, collect its city revenue through the utility bill rather than a city tax levy.

The larger the town and the more industrialized it is, the less can be said in defense of this practice. In fact, in a large town or city, possessing the usual number of factories and shops, the substitution of utility profits (assuming there is a municipal plant to produce these profits) for the city levy will probably cause more injustice and discrimination than the general property tax does. Under the general property tax the burden rests more heavily upon small properties of all kinds compared with large ones (in general) and more heavily upon residential as against business and industrial properties. If the city levy be replaced by utility plant profits, the inequalities of the burden on these types of properties will be even greater.

If the choice lies between the water company and the electric company as the source of profits for the taxless town, the latter should be used. Electricity in a small town is more commonly used than water supplied by a central waterworks. So far as larger places are concerned, it may be concluded that they should not be taxless. But if they are following the principle of the taxless town, the electricity plant should bear the burden, on the theory that every one uses water from the city plant. Both the electric and the water plants might charge rates to yield some profits to the city.

IN terms of directness, the city levy is always preferable to its substitute—municipal utility plant profits. The one way to make people aware of the cost of government is to collect taxes directly at the point of final incidence. Every property owner can tell to the penny how much his taxes are; yet ask him what part of the sales price of a package of cigarettes goes to the Federal, state, or local governments and the odds are he will not know.

Let no person suffer under the illusion that, for the city as a whole,

the elimination of the city tax levy by utility profits actually reduces the tax burden. The effect of this substitution is to reduce the tax bill proper, but to increase the utility rate. For the town as a whole, the decrease in the one will be offset by the increase in the other. Likewise, if the theoretical assumptions of universal utility use and correlation between property values and use are true for a given town, then the individual taxpayer will find his tax decrease offset by the rate increase. In case these theoretical assumptions are only partially true in fact, then some of the citizens will have a less burden, while others will have more of a burden.

Never can it be said, however, that the city as a whole has actually had a tax reduction by resorting to the status of a "taxless town."

Many of the claims of the advocates of the taxless town are exaggerated, as are likewise the rebuttals of the opponents. A sane analysis of this device discloses it to be no way out of the problem of taxation. Whether city revenues are gained from utility profits or tax levies, they come out of the pocketbooks of the local citizenry. Unless it can be demonstrated that the utility rates in the taxless town are something less that the rates of a comparable private plant plus the city levy, the hope of gaining a practical tax reduction is illusory. Should such a situation be demonstrated, the whole problem of the justice of tax collection through utility rates is still to be answered.



Odd Items about the Utility Services

IT costs the city $19,095 daily to light New York.

* *

OF the six continents, Africa has the smallest number of telephones.

* *

THE average radio receiver in the United States is tuned in 4.17 hours a day—according to a college professor's survey.

* *

THE total capacity of the United States industrial equipment is one billion horsepower, which does the work of ten billion men, or five times the earth's total population.

* *

FOURTEEN per cent of a year's daylight in the city of Baltimore is thrown away by allowing smoke to impregnate the atmosphere—with resultant costs for extra artificial lighting.

* *

DE LUXE street cars, providing upholstered seats for all passengers and costing a 10-cent fare instead of the standard 6-cent fare, will shortly be put into experimental service in Detroit.

* *

A NATION-WIDE teletype service for farmers, advising them of prices and market conditions, has recently been instituted with headquarters in New York, and offices in the principal market centers.



OUT OF THE MAIL BAG

The Real Taxpayers in "Taxless" Towns

HERBERT Corey in his article "Who Pays the Towns' Taxes in Taxless' Towns," in the December 8, 1932, number of PUBLIC UTILITIES FORTNIGHTLY, makes a telling point which is seldom understood by the layman; namely, that every penny taken from the ratepayers of a municipal power plant and applied to the payment of taxes "is a tax and nothing else."

An illustration of this truth is now being furnished by Jacksonville, Florida, which has again come into the limelight through the agency of a telegram sent to the city council of Boston. The Boston body had passed a resolution in favor of establishing a municipal electric light plant and the advocates of the municipal power plant project in Jacksonville, thinking to help matters along in the Hub, wired the Boston council to the effect that they would make $1,200,000 on their own plant in 1932; that their rates were low and that "next year" (1933) they would be able to turn over to the city $2,000,000.

But let us inquire into the actual facts.

On page 373 "Statistical Abstract of the United States," in the latest issue I have, it says this concerning United States Census reports on cost for electric service:

"First 500 kilowatt hours 7 cents: Jacksonville."

The same authority gives the rate for the first 50 kilowatt hours in Atlanta as 5 cents, both for the year 1929. The rates are practically the same for 1933, but with this difference: Atlanta is served by the "Power Trust," according to the municipal socialists. In other words, Atlanta is served by a private enterprise and the city receives a large tax from this private corporation.

Now compare this table of taxes for these two cities:

Tax Levy	*Jacksonville*	*Atlanta*
County and city	19.5 mills	15 mills
School and state	44.0 mills	16 mills
TOTAL	63.5 mills	31 mills

This reveals that the taxes in Jacksonville are double those of Atlanta. The three other large cities served in Georgia by the Georgia Power Company—Columbus, Macon, and Augusta—all have lower tax rates than Jacksonville. In other words Jacksonville's tax rate is far higher than the cities of Georgia served by the "Power Trust."

Next, let us inquire into the rates for electricity.

The average rate for all service in Jacksonville for 1931 was 3.44 cents per kilowatt hour; the average rate for all electric service supplied by the Georgia Power Company for 1931 was only 1.84 cents per kilowatt hour. And the Georgia Power Company paid just about ten per cent of its income in taxes!

On page 4570, of the *Congressional Record* for 1928, I find that the average rate for 120 places served by the Alabama Power Company was 1.25 cents per kilowatt hour, and out of this low rate the company paid several hundred thousands in taxes.

When I investigated the Jacksonville plant a few years ago I found that wages averaged at least 30 per cent below the New England rate for same kind of labor (I am assuming that the labor cost in Florida, Georgia, and Alabama are practically the same). Jacksonville, however, has some advantages over most of the cities in Georgia and Alabama; the Jacksonville plant, for example, uses oil, pumped right into the plant on the St. John river. The Georgia cities which I mention have no such advantage. The Jacksonville plant escapes all taxation except a state tax of $40,000 a year.

Taking the cost of labor, taxes, and the kilowatt-hour rates, the citizens of Boston have a better bargain than do those of Jacksonville with an average cost per kilowatt hour of 30 per cent below the socialized rate in Jacksonville.

—F. G. R. GORDON,
Haverhill, Mass.

The Effect of the Proposed Shorter Work Week upon the Utilities

THE article by George Soule, published in PUBLIC UTILITIES FORTNIGHTLY of January 5th on "The Effect of the Shorter Work Day on Public Service Companies," is

particularly timely.

The utilities, and especially our electric companies whose growth has been rapid during the past decade, could very well take the lead in any shorter work week movement; it looks as if the shorter work week will come, like it or no.

The main point to be borne in mind in any discussion of this idea, however, is that weekly wages are to be maintained. Employees are to receive as much in their weekly pay envelope for the shorter work week as they now receive for the present hours. This means then that the purchasing power of the men at work will remain the same and be augmented by the purchasing power of new men added to the payrolls. Thus, the idea differs radically from any share-the-work movement.

MR. SOULE states in his article of an increase in output necessarily following an increased productivity; he then explains how this increased output may be absorbed. As I see it, an increased output would be unnecessary unless desired. Suppose we consider a certain industry and use as a base a certain fixed output (assume present output); it is then merely necessary to strike a balance between increased efficiency (resulting from shorter hours), increased number employed, and decreased hours per employee. Suppose also, that the men are working on a 48-hour a week schedule and suppose that we want to employ 10 per cent more men. What schedule of hours will result? It will be a problem then, of adjusting hours of work to efficiency—for example: Assume that we have 100 men now employed. Then:

100 present force
x48 present hours

4,800 man hours

Or assume a 30-hour week:

100 same force
x30 new hours

3,000 man hours

Now, if we add 10 per cent to our force, we have:

3000
+300

3,300 man hours as against 4,800 man hours previously or 3300÷4800=68 per cent of former production—requiring a 32 per cent increase in efficiency to give the same production as formerly.

IT will be seen from the above simple calculation that there are three variables to be adjusted to meet the desired situation. The way these items vary requires more explanation:

1: INCREASE IN FORCE.

How many additional people should or could be absorbed to relieve the unemployment situation. Figures on the exact number unemployed are not available; if we say 15 per cent of the normally working population, we would probably be high. However, it would probably be unnecessary to take all of this number back to work in this scheme for the reason that if, we will say, 5 to 10 per cent returned to work at full pay, the increased purchasing power would make sufficient work to demand the return of the others.

2: HOURS PER WEEK.

This would depend as shown upon the number of additions to the force, the increase in efficiency which might be expected, the convenience of the hours, the question of shifts, and so on. The new schedule may vary from thirty to thirty-eight hours per week.

3: INCREASED EFFICIENCY.

This depends upon conditions of work, duration of work period, use of rest periods, use of leisure time. A certain weekly schedule with suitable rest periods will produce the maximum efficiency. What is it? In considering efficiency, we take into account, not only production but also quality, spoilage, error, results of fatigue, and other factors. As we have seen, taking on 10 per cent more men on a 30-hour week would call for 32 per cent increase in efficiency. Taking 15 per cent more men on a 38-hour week would only necessitate a 9 per cent increase in efficiency. From studies made on the subject, a 30 or 40 per cent increase in efficiency is not at all improbable with a suitable adjustment of hours and rest periods.

THE question is, who pays for the cost of the additional men ranging we will say from 5 per cent to 10 per cent of the total payroll?

As I see it, there are two ways in which this money can be provided; the first is a scheme which has been advocated on several occasions and works by means of compulsion or agreement. That is, every industry throughout the country at a given time takes on a certain agreed percentage of men and raises his prices to absorb the cost. Obviously no one competitive industry (and all industries are in a sense competitive) could raise its prices without others following suit. But, as Mr. Soule points out, this scheme of raising prices or rates may defeat the entire social gain from the transaction.

ANOTHER plan which could be more readily applied to utility companies is to absorb the additional cost by a combination of the following means:

Decrease in capital outlay; decrease in interest charges; decrease in overtime; decrease in labor turnover; decrease in medical attention; decrease in accidents and

claims. In addition will gain by better public relations and better service.

The first item which, I believe, will produce the most savings requires a word of explanation.

The question then arises, what to do with the equipment not used. The answer is, dispose of it or keep it until the growth of the concern absorbs the present excess. Two shifts where we now have one is the basis for this saving in overhead cost.

—WILLIAM T. ROGERS,
Radburn, New Jersey

A Local Farmer's Viewpoint of the Tennessee Valley Power Development Project

THE various references to the power development plans for the Muscle Shoals and Tennessee Valley, in PUBLIC UTILITIES FORTNIGHTLY (March 2, 1933, issue) are of special interest to me because I am a resident of the territory which will be affected. I am a farmer and live near Tennessee river in Kentucky. For several years after the big power dam at Muscle Shoals was finished we farmers along the river were hopeful that it would be leased or sold to some company that would actually use the power generated there but after it got to be a political football we lost hope. Now it seems that a real calamity is in future for us and the whole country—government operation of Muscle Shoals.

Why does the Tennessee river farmer hate the idea of government operation of Muscle Shoals? Has he not seen public funds squandered on Tennessee river all his life?

When has government operation of any public utility paid? Look what was done to the railroads during the World War and look at the government-owned barge lines now. They come out in the red every year. And who must pay the deficit? Not the big rich man away off yonder, as the campaign speaker would have us believe, but the burden falls upon every mother's son of us. This terrible depression has taught us that the consequences of the blunders of our lawmakers are felt by the poor the same as the rich.

If the government starts operation at Muscle Shoals we know it will be an experiment to be abandoned after a few years. Then our children and our children's children will be taxed to pay for some politician's idea.

Let certain legislators shout themselves hoarse in the halls of Congress in behalf of the forks-of-the-road farmer, but here is hoping that there are enough sane minds left there to let Muscle Shoals remain just as it is rather than dump any more millions in money into Tennessee river with government operation.

—REID TRAVIS,
Birmingham, Kentucky.

Another Illusion of the Technocrats Is Dispelled

QUOTING the claims of the proponents of technocracy, PUBLIC UTILITIES FORTNIGHTLY on page 112 of the January 19, 1933, issue states:

> "A modern Minneapolis mill produces 30,000 barrels (of flour) per man per day."

This statement has absolutely no basis in fact. The Census of Manufactures for the year 1931 shows that the flour milling industry employed in that year an average of 22,833 persons in its plants. The total production was 114,823,509 barrels during the same year. This is an average of approximately 17 barrels per man per day, based upon 300 working days. Of course, some mills are able to do better than this average, and some worse. The fairly efficient mill operating at close to full capacity could possibly produce an average of 25 barrels per day per man.

The 22,833 employees enumerated by the Census of Manufactures are workers in the plants only and do not include the administrative and selling forces which would number probably close to another 20,000 persons. Therefore, the production of the flour mills is something less than 10 barrels per day for each person employed by the milling industry. In a calculation of this sort it is probably fair to include all employees because of the fact that increased production per man has increased competition and has given employment to a larger number of salesmen and administrative workers.

—M. P. STARK,
Statistician, General Mills, Inc.
Minneapolis, Minn.

How an Inflated Currency Would Affect the Utilities

THE banking crisis that reached its climax on inauguration day, the declaration of a nation-wide bank holiday, and the emergency steps that were taken to supply needed currency have given rise to speculation concerning the measure of "inflation," if any, to which United States money is being or may be subjected. In the following number DR. ANDREW A. BOCK, *the well-known authority on finance, will view the current situation from the viewpoint of the utility industry—and incidentally, of the state commissions.*

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

B. E. HUTCHINSON
Vice president, Chrysler Corporation.

"Regulation in and of itself is an evil."

JACK SHUTTLEWORTH
Humorist and editor.

"WILL TRADE 100 kilowatts, practically new, for 20 volts. Call WICkersham 6-12174."

ALFRED E. SMITH
Ex-governor of New York.

"I am opposed at this time to the construction of the St. Lawrence waterway, because it would be a waste of public funds."

MERLE THORPE
Editor and economist.

"We have seen hundreds of new activities wished on government, until, today, nearly one sixth of our population is dependent upon tax payrolls."

HOWARD BRUBAKER
Humorist and columnist.

"Earl Long says that Brother Huey had $10,000 in power trust money in his bathrobe pocket. The Kingfish indignantly denies the dastardly charge that he wore a bathrobe."

Excerpt from a Western Union press release.

"Suggestions have been made that the telegraph company permit certain words to be added free to telegrams. The one suggested most often is the word 'love,' defined as the tenth word in a telegram, but the answer always has been that it might constitute a discrimination in favor of that commodity."

ROBERT R. MCCORMICK
Chicago newspaper publisher.

"There is not a cabinet officer, there is not a member of Congress, who dares to try to demonstrate that one half of the money appropriated for any department of government is used for the purpose designated. Not one half of the money appropriated for the War Department is spent to make an army; not one half of the money appropriated for the Navy Department is spent to build, operate, and maintain a combat fleet; not one half of the money appropriated for the Post Office Department is spent to move the mails."

What Others Think

The Coming "New Deal" in the Regulation of the Carriers

THREE main emergency problems were thrust into the lap of the new administration; they are the three "B's" which for nearly four years spelled three "bugaboos" to the Hoover administration—banking, budget, and bread lines.

Thus far, the new administration has dealt with these problems courageously and intelligently, but in the incidental turmoil of hectic governmental activity, other pressing problems which must soon command attention have escaped the public notice to which they would otherwise be entitled.

Of special interest to regulatory circles is one of these problems—the national transportation situation. It would be almost unpatriotic during these critical times to repeat some of the things which are being said about the railroad situation in Washington, but it becomes increasingly evident that a New Deal in transportation is needed and that it is now in the making.

To appreciate the gravity of this transportation situation, it is necessary to start from scratch, forgetting or laying aside for the time all impressions gained from motor carrier propaganda, railroad industry propaganda, inland waterway propaganda, and other propaganda sent forth, often with the best intentions in the world, by interested parties. This is important, not so much because of the danger of being deceived by factual misstatements, but because the partisan viewpoint inevitably clouds the detached judgment that is vitally necessary to the restoration of our transportation facilities to a sound and serviceable place in the scheme of our future political economy. We can no longer consider individual rights or equities. We must be reconciled to losses resulting from necessary adjustments. We have passed the point where we can expect that every security holder's or property owner's wrong will be remedied. The legal axiom *"ubi jus, ibi remedium"* will simply have to be suspended pending the national reorganization. The banks have had their medicine. The railroads and other carriers are next in line. They are on the threshold of the New Deal.

Having brushed away impediments of prior impressions and starting with a comparatively clean slate of mental receptivity, one could do no better than to begin with the terse but comprehensive picture of the transportation situation than the Report of the National Transportation Committee made public on February 13th, not overlooking the special report of Al Smith. The findings of this committee become more significant when one reflects that it was formed October 7, 1932, under the chairmanship of the late Calvin Coolidge, at the expressed invitation of a group of insurance companies, the Investment Bankers Association, and four leading universities of America.

SUMMED up in a sentence, the committee found that our railroads need:

(1) Economies in operation and internal organization;

(2) Sensible regulation;

(3) More efficient management;

(4) Elimination of *unfair* competition.

Those who expected such a conservative committee to recommend more aid to the railroads by the government

through R.F.C. loans or otherwise were disappointed. The only change suggested in that quarter was that the R.F.C. interpretation for "adequate security" for railroad loans need not necessarily mean marketable collateral.

We see from reading the report a bird's-eye view of a vast network of railroad lines brought into existence upon the face of the map of the United States at different times by different and frequently by conflicting interests. This competition of management and duplication of operation continues to this date. As a direct result, we have parallel lines, unnecessary lines, weak lines, crazy-quilt lines, all maintained at a loss. What is the remedy? Immediate and intelligent reorganization and consolidation. Metropolitan terminals should be merged and unnecessary terminals scrapped; circuitous haulage should be eliminated and traffic should be carried over the most direct route, letting the revenue fall where it may. Of course, this will mean losses to some railroads and to their investors, but it is a surgical operation which, however painful, must be performed if the cancer of insolvency is not to wreck the healthy parts of the system.

Speaking of surgical operations leads to the reverse side of this same picture of necessary reorganization. The committee found that our regulatory policy of rate making is "obsolete." Born in 1898 under the ill-starred Smyth *v.* Ames decision, modern regulation and legislation adopted pursuant thereto are dedicated to the principle that railroad rates must yield earnings sufficient to preserve utility investment to the extent of the value of the property involved. So frequently, this has resulted in attempts to preserve financial structures which are at present overcapitalized. Rail owners themselves have thrown overboard valuable assets—public relations, necessary service improvements, possible lower rate adjustments —in order to meet the temporary expediency of satisfying the demands made by top-heavy capital structures.

What to do about it? From the regulatory aspect, the report recommends an immediate change in the present rule in rate making, based upon a fair return on the value of the railroad's investment. The recapture clause of the 1920 Transportation Act should also be repealed as unworkable and as throttling incentive towards efficiency of operation. The report states:

> "The basis (for rates) of costs of operation under efficient management is a better general guide than any attempt to preserve capital structures irrespective of economic trends. We see no reason why the rate-making rule should not say in plain English that railroads are entitled to make a reasonable profit based upon costs of efficient operation and that they are not entitled to earnings merely to preserve present structures if overcapitalized."

From the management side of the overcapitalization problem, the report suggests an immediate and thorough reorganization of the top-heavy structures without the destructive receiverships which too often have degenerated into out-and-out rackets wherein lawyers pick the bones of the corporate carcass. Bankruptcy reforms should facilitate such reorganization, continues the report.

The report was most emphatic upon the subject of capital reorganization, pointing out the practice of many roads of refunding their obligations instead of amortizing them over the life of the equipment that was purchased with the borrowed funds. There occurs this strange phrase in the report of this creditor's committee: "The present debt structure must be revised and the losses written off."

Consider this in connection with another phrase in the report:

"Wherever there is fair economic competition it will decide the rate question and it should be permitted to do so freely."

Surely this is an astonishing report to come from conservative quarters!

The committee had another surprise when it spoke about motor carrier com-

petition. Instead of upbraiding the motor carriers as parasites and advising their elimination whenever and wherever they compete with the railroads, the report states:

> "One thing is certain. Automobile transportation is an advance in the march of progress. It is here to stay. We cannot invent restrictions. We can only apply such regulation and assess such taxes as would be necessary if there were no railroads and let the effect be what it may."

FINALLY, the report pointed to the failure of private railroad management to keep abreast of those in kindred industries. As for the Interstate Commerce Commission, after complimenting much of its pioneering work, the report concludes:

> "Nobody can assume authority without accepting responsibility. The existing railroad condition speaks for itself, to say that regulation by the commission has left something to be desired."

Al Smith's separate report openly advocated the abolition of the commission and the coördination of the regulation of all transportation facilities. He also found fault with the railroads in failing to help themselves. He believes that alert management, service improvement, and the anticipation of competition could have avoided much of the present railroad ailments.

THE reactions to the report were varied. Governor Clyde M. Reed, of Kansas, for instance, remarked that "in some details, especially some made by former Governor Smith for reorganization of the work of the Interstate Commerce Commission, they (suggestions of the report) appear impracticable."

Yet, it is the substance of this very separate Smith report that appears quite likely at this time to be made the basis of the new administration's plan for relieving the railroad situation. Many roads are in a very critical condition indeed. All during the bank holiday week, high moguls in the transportation field slipped in and out of Washington in worried conference about their own troubles. Transportation legislation is almost certain to be considered at the current special session.

Most of the opinion in Washington is to the effect that the railroads will get a good going over. There will be no piecemeal legislation such as the adoption of bus regulation or further restriction upon inland water carriers. More likely, there will be a coördination of the regulation of all transportation agencies whether operating on rail or rubber, or land or water or air. The Interstate Commerce Commission may itself be revised and formed into a joint regulatory board for the supervision of all these carriers. Perhaps, as suggested by news dispatches in daily papers of March 13th, it will be abolished in favor of a single head, answerable directly to the President. Ultimately, this post may develop into a cabinet office—a "Secretary of Transportation" —but for the present the formal dignity of the office is immaterial. The important point is that coördinated transportation regulation as a whole is going to succeed the piecemeal and unsatisfactory regulation of a half-dozen different classes of carrier service by a half-dozen different government agencies.

THEY are saying also in Washington that there will be other and further railroad reform. Roads will be led or pushed into reorganization under the new Bankruptcy Act. Operating economies will be dictated as conditional prerequisites of further financial aid, and the security holders will simply have to grit their teeth and hold on tightly while the "wiping off the books" process is going on. And this brings to mind the fact that insurance companies are the leading holders of railway securities. Already in an uncomfortable position and faced by state holidays on policy loans, such as preceded the banking holiday, the insurance companies are facing a problem of their own which may require governmental attention when the melting down of equities in the railroad clean-up be-

gins to shrink assets in their portfolios.

Washington freely talks these days about the inevitability of these two industrial emergencies—railroads and insurance. Perhaps by the time this appears in print, the railroad problem will have burst into front-page headlines. Perhaps it will have been averted or postponed, but sooner or later, like little Billy's aching tooth, it will have to come out; and if the future course of the Democratic administration is to be judged by its brief but energetic past, we will "have it out" soon.

—F. X. W.

REPORT OF THE NATIONAL TRANSPORTATION COMMITTEE. New York *Times*. February 13, 1933.

REACTIONS TO THE RAILROAD REPORT. Editorial. The Topeka *Daily Capital*. February 15, 1933.

PLANS FOR NEW TRANSPORTATION REGULATION. Washington *Herald*. March 13, 1933.

Another State Commission Emerges from an "Investigation" with an Indorsement

DURING the last five years various state public service commissions have been under political attack. The standard charge against the commissions is that they have failed to protect the public. What this means is that in the opinion of the critics the commissions have not forced utility rates down as low as they should. It is not surprising that attacks of this kind should be made. Disappointed parties involved in law suits would abolish the courts if they could. There would be no chance of making a political issue of the courts, however, because the courts are too well established and the parties interested are too few in number to attract the attention of political leaders. But public utility regulation is a horse of another color. The regulatory commission is comparatively a new institution. Persons interested in commission decisions are numerous enough to command political attention. In addition to that there is a considerable group of persons opposed to commission regulation in principle.

So we have had from time to time demands that this, that, or the other commission be abolished on the ground that it has failed to protect the public. Various commissions, as the result of this agitation, have been subjected to investigation by legislative committees. None of these investigations has resulted unfavorably to commission regulation. Some of the investigators have gone so far as to admit that they were hostile to the commission at the outset, but acknowledged their error after ascertaining the facts brought to their attention by the investigation. The result of all of these attacks against the commissions has been that the commissions have been strengthened rather than weakened.

Only in two states has the political agitation against the utilities brought about any marked change in regulatory policy. In Oregon commission powers have been concentrated into the hands of a single commissioner; but, on the other hand, the commission powers have been considerably enlarged. South Dakota has also just gone over to a one-man commission.

NEBRASKA is one of the latest states to witness a fight against its commission. In 1931 the house of representatives indefinitely postponed by a close vote a bill submitting a constitutional amendment that would have abolished the state commission. This was a proposal for a straight out and out junking of the commission as nothing was suggested in the way of a substitute.

The supporters of the bill criticized the commission according to the standard practice. They alleged that the

commission failed to represent the interest of the public and charged that its members had favored the utilities.

THE author of this bill was a telephone subscriber who was dissatisfied with an order of the commission increasing rates for business service when the company substituted automatic or common battery service. Ninety per cent of the patrons of the exchange had consented to the rate increase when the higher grade of service was available; but the author of the bill wanted the commission abolished.

Governor Charles W. Bryan was said to have been responsible for the support given to the bill. In his budget message he cut down the biennial appropriation for the commission from $142,000 to $92,000 saying that the commission might as well be abolished as it existed largely as a training school for men for the utilities.

The attention of the legislature at this year's session was again called by Governor Bryan who recommended a constitutional amendment abolishing the commission and substituting for it a commission to be composed of the secretary of state, state auditor, and commissioner of public lands and buildings. The house of representatives of the state appointed a select committee of five members to consider the governor's recommendation and for the purpose of investigating:

> "1. The present and past activities and services rendered by the state railway commission to the people of the state.
> "2. Whether the service now rendered by the state railway commission to the people is worth the expenditure made for its maintenance.
> "3. Whether the duties and activities of the state railway commission should and could be transferred to the three executive officers designated by the governor, and what, if anything, would be saved by such transfer."

The conclusion of the committee and its recommendations was that the railway commission be retained in substantially the present form. The committee which based its report on the past experience of the state said that the people were through with a regulatory body composed of state officers functioning through secretaries; that there would be no substantial saving by such a change. The committee declared that when Nebraska tried a similar experiment some time ago the state officers employed secretaries to do the work at salaries higher than the state officers themselves received.

THE report of the committee outlined the many activities of the Nebraska commission, which handles about 750 formal cases yearly together with many times that number of informal cases. The report also showed that the commission supervises the issuance of securities to the amount of $10,000,000 a year. It also appeared that during the last five years over 60 general rate structures of telephone companies have been revised downward by the commission; that 584 electric transmission lines have been constructed under its supervision; that the commission has inspected and authorized permits for the sale of tractors to 54 manufacturers and to 968 dealers; that the commission has active supervision of irrigation matters, busses and taxicabs, aircraft, street railways, express companies, telegraph companies, Pullman companies, and railroads.

The legislative committee regarded the commission regulation of railroads within the state as its most important function. Upon this the committee reported as follows:

> "Although the commission has jurisdiction of various matters referred to it, the major portion of its duties revolve about the regulation and control of the railroads. Since the citizens of Nebraska pay over one hundred million dollars in railroad rates, it can be seen that railroad rates and charges, which are paid directly or indirectly by every citizen of the state, are a matter of utmost importance and concern to the state and all its citizens. The commission's jurisdiction over railroad matters involves, among other things, intrastate rates; depot facilities, as to size, adequacy, and sanitation; industrial relations, leaseholds, and switch-track connections; train service throughout the state, including

transportation of the mails; enforcement of safety laws, and making safety regulations, such as adequate crews, adequate working conditions, and working hours; switch lines; all matters pertaining to the safety of the traveling public; operation of stock trains, including accommodation of caretakers and protection of stock, which latter includes prevention of overcharges on stock shipments; settlement of transfer track disputes between railroads; adequate communication at depots; enforcement of antipass laws; enforcement of laws relating to public and private crossings; settlement of overhead and under-pass crossing disputes; the general policing of all state laws regarding transportation by rail. In addition thereto the commission has the duty of appearing before the Interstate Commerce Commission in all interstate rate cases. In the matter of intrastate rates, reparations for overcharges against citizens of the state were, in the year 1932, over $150,000. This item alone is almost three times the annual appropriation for the whole commission, while it constitutes only one of the large number of activities. One of the greatest services rendered by the commission in connection with railroad rates, has been its appearance before the Interstate Commerce Commission in rate cases involving citizens of this state. These cases do not involve the mere claim of one citizen or group for money due for any illegal charge, but involve the fixing of rate structures on commodities shipped into and out of the state. In 1928 the commission appeared in 25 such cases; in 1929, 41; in 1930, 29; in 1931, 43; and in 1932, 44. When a reduction is obtained, a saving is occasioned to each and every person who buys or uses the commodity concerned. The following is a partial list of the commodities on which rate reductions have been obtained at these hearings: Poultry, butter, and eggs; cement; grain; horses and mules; salt; coal; class rates; fruits; petroleum and its products; brick; lumber; potatoes. Those savings for the year 1932 are as follows:

Live stock	$ 507,778.00
Grain	1,267,588.93
Dairy products	751,769.69
Sand and gravel	26,603.50
Potatoes	159,600.00
Petroleum	778,506.43
Class rates	4,077,153.00
	$7,568,999.55"

THE most important question upon which the legislative committee reported was, of course, whether the service rendered by the state railway commission to the people was worth the expenditure made for its maintenance. That is a question which the critics of regulation are constantly raising. Upon this the committee reported as follows:

> "The total expense of the commission and all of its activities, for the past five years, has cost the people of the state an average of about $60,000 per annum. Their collections for license fees, etc., amount to about $2,000 per annum. The facts hereinbefore set forth disclose that the rate saving to the people of the state is in excess of $7,000,000 per annum. The total cost is less than 1 per cent of this saving. These figures appear large, but the facts are undisputed by any evidence that has been before us, and when it is considered that revenues of the railroad companies in the state exceed one hundred million dollars per annum, the rate saving is not a large per cent of the whole. If the commission can effect savings of even 1 per cent of the total annual revenues, the cost would be many times justified, without giving consideration to the various other activities hereinbefore mentioned."

Thus another state commission emerges from a political attack with a commendatory legislative committee report.

EVERY attack which has been made against state commissions has been based on lack of knowledge of commission work and consists largely of exaggerations and misrepresentations.

The critics who are interested solely in rate questions overlook other important commission activities. These include, in many states, the supervision of security issues. They include service regulation both in the interest of adequacy and safety of operation. They include grade-crossing protection and elimination, the inspection of meters and the handling of informal complaints. Many controversies very important to utility customers are settled without expense which would otherwise not be accomplished without litigation. One of the important features of commission work has been the elimination of discrimination both in rates and service. Old franchise contracts were honeycombed with this unfair practice. The reform in accounting practices of

the utilities required by the standard accounting rules of the commissions has also been of great value to the public. The customers of utility companies have secured many services they would never have received had it not been for the compulsory action of the commission.

It is a common charge that commissions favor the utilities and that ratepayers are at a great disadvantage before the commissions because the utilities are represented by skilled lawyers and experts while the rate-paying public has to be contented with less skilled representatives. But whatever the comparative skill of utility and public representatives the fact is that the great majority of cases before commissions have been decided against the contention of the utility companies; and the fact that utility contentions are occasionally upheld does not mean that the commissioners are controlled by the utilities or are utility minded unless it is assumed that utility companies can never be right and utility customers can never be wrong. Even on the assumption, however, that the utility companies are always wrong, the balance of commission decisions greatly favor the ratepayers. This would hardly be so if the commissions were controlled by the utilities.

ANOTHER of the standard charges against commission regulation is that the Federal courts interfere with it; that there is a flood of litigation in the Federal courts; that this flood of litigation practically destroys the effectiveness of the work of the commissions. Statements of that kind have been proved to be false as it is a fact that commission decisions are usually final and appeals to the courts the exception rather than the rule. The charge that it has been common for utility companies to insist on a return on the reproduction value of their property has also been shown to be false. The commissions have not adopted such a rule, and, as appeals to the courts are an exception, it cannot be said that reproduction cost has been the basis of the return even if that were the Federal court rule.

In all the agitation against the commissions arising from rate complaints the savings to utility customers by rate reductions ordered by the commissions or secured through negotiation without litigation are never mentioned. In the Nebraska investigation the question whether commission regulation was worth its cost was actually raised. The finding of the committee that the total cost of the commission was less than one per cent of the saving to the public through commission activities disposes of that question so far as Nebraska is concerned.

A like investigation in other states would undoubtedly show that, disregarding all commission activities except the regulation of rates, the public utility commissions are at present and have been for years saving the public many times their cost.

—H. C. S.

Dr. Felix Frankfurter Ventures Three Postulates of Improved Utility Regulation

OUT of the welter of economic and political problems cast up by the depression, the question of what to do about public utility rates and valuations arises to plague the serenity of the body politic. Of course, these enigmas are not new. Since the public first came to depend upon central systems furnishing light, power, heat, water, transportation, and communication services, controversy has been typical of discussions between the government and consumer on the one hand, and the managers on the other.

Whatever may be the philosophy of the proper relations between the conflicting interests of the warring groups, it is accepted that the services rendered are public in character and properly the subject of government control no less than police and fire services. In the early canal and railroad charters, provisions relating to maximum rates and the amount of earnings were usually included. Later, supervisory and mandatory administrative commissions were established to make effective the requirements of common and statute law. Led by the Grangers in the seventies and followed by the Federal government in the eighties, the railroads were gradually but inexorably brought under the control of commissions. Further scope to the commissions' jurisdiction was established early in the present century when the so-called local utilities were rapidly placed under the guidance of the state commissions and interstate oil pipe lines, telephones and telegraphs, and certain water carriers were added to the repertoire of the Interstate Commerce Commission.

ALL sorts of troublesome issues were tossed in the laps of the commissions—rates, service, accounting, finance, and combinations. Most persons not only hoped for a speedy solution of vexatious problems but confidently expected as much. To borrow a phrase or two from Professor Felix Frankfurter:

> "With characteristic American buoyancy we assumed that we had discovered a panacea, and so made it work overtime. We also assumed that it would work by itself." [1]

Although much has been accomplished by way of reducing corruption in many places and securing a better measure of public welfare, Professor Frankfurter notes that "pessimism has supplanted the earlier feeling of hope." He finds the difficulty to be the result of two factors. One is the rise in the general price level during the war period which necessitated an increase in public utility rates along with other rates and prices. The public, not realizing the inevitable increases, blamed the commissions for their willingness to permit the advances. The other factor is a growing conviction that not only have the aims for which the commissions were designed not been realized, but "that the regulatory systems operate to defeat the very purposes for which they were created."

Professor Frankfurter cites, as an example of the ineffectiveness of commission control, the long drawn out New York Telephone Case, which remains unsettled after more than a decade of litigation costing the company alone $5,000,000 (to 1930) and developing 62,864 pages of testimony. "The heart of the difficulty," Professor Frankfurter asserts, "is the current judicial approach to utility valuation." He is skeptical of the Supreme Court's doctrine of "fair value" which must be determined by giving weight, among other factors to estimated cost of reproduction at the time of a rate hearing. These pronouncements are

> ". . . based upon unrealities, are financially unsound, and lead to uncertainty and speculation. The so-called rules set the regulating agencies an impossible task, for they form a maze of cobwebbery."

There is more in the indictment of the court's valuation doctrines. One of the results has been the growth of fictitious values and the uneconomic consolidation and unification of utilities. Moreover, the maze of intercorporate relations thus developed has taxed the powers of commissions to attain and employ knowledge of utility operations.

The author finds another source of difficulty in the character of men elected or appointed to the public utility commissions. Admitting the presence occasionally of men of superior qualifications on these boards, he nevertheless concludes

> ". . . that the public as well as the utilities have suffered from many mediocre lawyers appointed for political considerations, looking to the public service commis-

[1] Frankfurter, Felix. *The Public and Its Government*, 1930; page 89.

sions not as means for solving difficult problems of government, but as opportunities for political advancement or more profitable association with the utilities."

PROFESSOR Frankfurter does not attempt to be unnecessarily gloomy, nor is he a believer in panaceas. Like all who have reflected deeply on these questions, he ventures to state a few "postulates" of improved control.

First, he would have public regulations freed from the present doctrines of judicial valuation. As an alternative, he joins the Interstate Commerce Commission and others in advocating a fixed valuation based upon investment. He goes so far as to predict that the drop in commodity prices recently may induce the utilities whose properties have been largely constructed in the past decade to advocate such a rate base.

Second, Professor Frankfurter would have local utilities regulated by local administration. He feels deeply that the weakness of state control may be charged in no small measure to the interference of the lower Federal courts.

Finally, he calls upon the public to establish effective agencies of control, free from the influence of politics, and generating an esteem now felt for the judiciary.

PROFESSOR Frankfurter, in spite of many suggestive observations, leaves untouched a number of vital issues. Wholesale commodity prices have now declined to pre-war levels. Suppose prices do not rise sufficiently during the remainder of the decade to levels comparable with utility charges? Or suppose they do not rise at all? Does any one suppose that the public will long tolerate the discrepancy in the two levels? If a fixed rate base equated to investments made in boom times is used as a pretext for maintaining a higher level of utility rates during depression, either of two things may and probably will happen. Either the fair rate of return will have to be lowered or there will be an expanding movement for government-owned and operated plants. In any event, the public will not continue to pay rates out of line with prices generally. Moreover the capital structure of the utilities will have to be altered and the fixed charges reduced, whether as a result of voluntary action or receivership.

In other words, no doctrine of valuation can stand against the tide of receding prices, if long maintained.

THIS discussion must be closed with one further remark: Whatever may be the shortcoming of public control, part of the blame must be placed upon an indifferent and unperceiving public. We are so blinded by doctrines of local control and individualism that we still believe the so-called utilities can be regulated by local agencies. Utilities in our country are often physically connected over state and local boundaries; they are usually owned or controlled by interstate holding companies. These facts should be perfectly evident as a result of a number of investigations by the Federal Trade Commission, the New York commission, and other reputable bodies. Yet an unaroused public gives little heed to the utterances of its public servants. It still cherishes the belief that a series of nation-wide enterprises can be made to serve the public interest by hopelessly inadequate local agencies. The reliance of Professor Frankfurter on improved local regulation seems to me to be doomed to failure.

—RALPH L. DEWEY,
The Ohio State University

THE PUBLIC AND ITS GOVERNMENT. By Felix Frankfurter. New Haven: Yale University Press. 1930. 170 pages. $2.00.

The High Cost of Competition between Private and Municipal Plants

¶ *The wasteful and uneconomic features of the proposed return to a form of utility regulation that has already been tried—and discarded. In* PUBLIC UTILITIES FORTNIGHTLY *of April 27th.*

A Handy Railroad Organization Chart

ALL too rare are the devices which make statistical and factual information about the complicated subjects of modern business problems easy to assimilate. Such a device is a wall chart recently published by Robert A. Burrows, of Pittsburgh, already noted for his original works for ready reference in statistical matters.

Mr. Burrows' latest creation has to do with railroads. It purports to show, and apparently does, the inter-relation, consolidation, and capitalization of over 350 American railroad companies, as of January, 1933. The chart includes such valuable information as the following facts:

"1. Inter-relations of all voting stocks showing per cent holdings of all classes along with the net per cent of total voting control.

"2. Total amount of outstanding capitalization: bonds, preferred and common stocks with an extension showing the segregated percentages of each.

"3. Index to chart including the assignment to each of the 21 systems under the latest proposed I.C.C. Consolidation Plan.

"4. Last four years earnings on the common, preferred, and ratio of fixed charges times earned.

"5. Total average miles operated.

"6. Funded debt per average mile of road.

"7. Total R.F.C. loans authorized and amounts repaid.

"8. Operating ratio indicating efficiency in operation and management.

"9. Designation of leases, agreements, holding companies, and so forth."

Needless to say, this little chart should prove an indispensable reference for utility executives, supply companies, investment brokers, and others generally interested in our national railroad industry.

—M. M.

RAILROAD CHART. Compiled and published by Robert A. Burrows, 204 Koppers Building, Pittsburgh, Pa. Price $1.00.

Publications Received

CAN AMERICA STAY AT HOME? By Frank H. Simonds. New York: Harper & Brothers. 1933. 376 pages. $3.

COMMUNICATION AGENCIES AND SOCIAL LIFE. By Malcolm M. Willey and Stuart A. Rice. One of a series of monographs prepared under the direction of the President's Research Committee on Social Trends. New York: McGraw-Hill Book Company, Inc. 1933. 228 pages. $2.50.

DEGENERATE DEMOCRACY. By Henry S. McKee. New York: Thomas Y. Crowell Company. 1933. 142 pages. $1.50.

ELECTRIC LIGHT AND POWER COMPANIES IN THE UNITED STATES. The Bonbright Survey, 9th Edition. Revised to October, 1932. Edited by G. F. Whitig and J. A. Stuart. New York: The McGraw-Hill Publishing Company, Inc., 184 pages. $10.

NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS: Proceedings of the Forty-Fourth Annual Convention, Hot Springs, Arkansas, 1932. New York: The State Law Reporting Company. 1933. 704 pages. $5.

PUBLIC UTILITY REGULATION. By William E. Mosher and Finla G. Crawford. New York: Harper & Brothers. 1933. 612 pages. Price $5.

RECENT SOCIAL TRENDS. Vols. I and II. Report of the President's Research Committee on Social Trends. New York: McGraw-Hill Book Company, Inc., 1933. 1568 pages. $10.

RESULTS OF MUNICIPAL LIGHTING PLANTS: The Answer to the City's Financial Problems. Record of 222 Cities Under Municipal Ownership Rates in Effect 1932. By C. F. Lambert. Kansas City: Burns & McDonnell Engineering Company. 1933. Price $1.00.

THE AMERICAN TRANPORTATION PROBLEM. By Harold G. Moulton and associates. Washington: The Brookings Institution. 1933. 914 pages. $3.00.

THE AUTOMOBILE'S CHALLENGE TO AMERICA'S TRANSPORTATION POLICY. By B. E. Hutchinson. A Cyrus Fogg Brackett Lecture at The School of Engineering, Princeton University, Princeton, N. J., December 13, 1932.

The March of Events

Radical Revision in Commission Regulation in Various States

A combination of the drive in the various states for more economy in governmental operations and of the agitation for adjustment of utility rates has resulted in radical revisions in three states during the last few weeks in the set-up of the regulatory commissions, as well as proposals for similar revisions in a number of other states.

In North Carolina, most interesting was the law which was passed by the legislature (H. 420) and which will take effect January 1, 1934, abolishing the present corporation commission which had jurisdiction over public utilities, and transferring its powers and duties to a newly created utilities commissioner to be appointed by the governor. The "one-man commission" idea first found expression in Oregon which now has a single utilities commissioner, and there are reports that it is being considered by legislatures in a few other states.

In Indiana, the legislature, which adjourned March 6th, enacted a law (H. 164) upon the recommendation of Governor Paul McNutt, abolishing the present public service commission of five members and creating a new commission of three members, together with a public prosecutor to conduct the handling of rate cases against public utilities. Governor McNutt has already appointed Perry McCart, an attorney of Paoli, Moie Cook, manufacturer of Logansport, and Samuel Trabue, mayor of Rushville, as members of the new commission. Sherman Minton, New Albany attorney, was named as public prosecutor.

Delaware, the only state in the Union which has so far refused to create a state regulatory commission, now has pending in its legislature a bill (S. 1) for the creation of a regulatory commission to have jurisdiction over railroads and public utility matters. The new commission would be known as the "Public Utilities Commission of Delaware."

Governor Bryan of Nebraska has made certain recommendations to his legislature which has resulted in a bill being introduced providing for the submission of a constitutional amendment to abolish the present state railway commission and replace it with a public utilities commission. The new commission would not be a full-time commission, but would be composed *ex officio* of the secretary of state, the auditor, and the commissioner of public lands and buildings. An adverse report on Governor Bryan's proposal, however, resulted from an investigation by a special committee of the Nebraska house which was filed on March 8th. The report stated that the commission's work is of such character that it could not be performed by executive state officials.

In Arkansas and Montana, proposals to abolish both regulatory commissions, respectively, were not acted upon. Both of these state legislatures have now adjourned.

In Ohio and Michigan, proposals to abolish the public utilities commissions of both states are now pending before the legislatures. The Ohio measure (H. 581), however, would substitute a "public service commission" with even wider powers than now granted to the present public utilities commission.

A Texas law (H. 447) would replace the present railroad commission which does not have general jurisdiction over utilities with a public utilities commission, which would have such general jurisdiction.

In Missouri, a bill (H. 35) has been introduced to repeal the public service act, under which the present public service commission functions. A new regulatory act would later be substituted.

Radio Broadcasting Begins to Feel Depression

Radio broadcasting with all the health and vigor of lusty infancy has heretofore failed to show the effects of the depression; but it took its first backward step since its birth when the Federal Radio Commission on March 24th granted permits to eight stations to cut down their time on the air. The stations involved were all small (most were only 100-watt), but the trend is significant. Don Craig, radio specialist for the Washington (D. C.) *Daily News*, commented upon the commission's action as marking the first backward step "broadcasting has made in ten years." He was of the opinion that the chief reason why radio broadcasting has heretofore failed to feel the depression is because it is not old enough to have established a normal income.

The reason assigned for the minor stations' desire to cut down their broadcasting time is because of inadequate revenues from the sale of advertising time to meet operating costs. A special temporary regulation permitting stations to apply for less time was made by the commission during the week of March 13th. Under a former standing rule

of the commission, stations must operate at least two thirds of the full time allowed under their licenses.

Previously the commission had devoted most of its time to denying applications for increased time. Months have been spent straightening out claims of stations that they should be given more time on the air. Now Mr. Craig has noted the slight reaction. The major stations are all still striving for more time on the air and it is not regarded as likely that any of these larger independent or chain units will take advantage of the commission's loosening of the two-thirds rule; but, as Mr. Craig points out, "it's the little fellows who indicate the way the wind is blowing."

Roosevelt Moves to Regulate Banking and Investments

BANKING legislation aimed at reform of recently disclosed abuses and Federal regulation for the protection of investors in securities hold a high place on President Roosevelt's current legislative program, according to a Washington dispatch of March 24th to the *Wall Street Journal*. The present intention is to submit these matters to Congress following the administration program for mortgage relief and for the revamping of Federal agricultural credit agencies—the projects now under consideration. It is hinted that the banking and investment regulatory measures may go before Congress in a single bill form since they have a single purpose.

The following were the "highlights" given in a thumb-nail sketch of the proposed regulatory measures in the *Journal*:

"The Roosevelt investment regulation plan:

"Contemplates publicity rather than any blue-sky arrangement such as the individual states have attempted.

"Would require fullest disclosure of facts in prospectus for any security, including bonuses and interest of the bankers.

"For securities already in hands of the public, independently audited statements would be required to be made public at specified periods; severe penalties would be provided for violations.

"Aims to keep speculation in proper channels, rather than try to check it.

"There has been no decision either as to the desirability or constitutionality of requiring incorporation of security exchanges. Question of bringing about desired publicity through enacting Federal corporation law or proceeding under interstate commerce clause remains undecided."

Publication of all facts in connection with securities offered for sale and continuing publicity for the affairs of corporations whose securities have any wide public distribution will be provided in the investment reform bill. This may go as far as the enactment of a Federal incorporation law, and it will at least demand frequent and uniform corporation statements.

Senate Liberals Oppose Junking of Commissions

TENTATIVE plans of President Roosevelt for reorganization of the Federal government call for the abolition of the Federal Trade Commission, the Federal Power Commission, the Federal Radio Commission, the General Accounting Office, and possibly the Interstate Commerce Commission, according to various press association dispatches from Washington on March 21st. The immediate reaction to this news was the announcement of determined opposition by Senate Progressives.

The President's tentative plan, as far as could be learned from unofficial sources at Washington, calls for the transferring of some of the work of the Federal Trade Commission to the Justice Department. The Federal Power Commission's tasks would be performed by the Interior Department, while the Radio Commission would go under the Commerce Department. The tentative plans for the reorganization of the Interstate Commerce Commission are still uncertain but the prevailing opinion in Washington is that the regulation of all interstate carriers, whether by rail or rubber tire, and whether by land or in the air or over the waters, will be coördinated in a single Federal transportation regulatory agency answerable immediately to the administration. This would involve also the wrecking of the Shipping Board and the present Aeronautics Division of the Commerce Department.

Senator Norris (R. Neb.) expressed the hope that the plans will be finally rejected before a final decision is made. He was of the opinion that the alteration of the independent status of the Federal Trade and Federal Power Commissions would "strike at the heart of the Federal regulation of the power industry."

He added:

"What would have happened to the Federal Trade Commission's Power Trust investigation, if it had been under the control of a member of President Hoover's Cabinet?

"As it was, the administration hampered it somewhat, but the commission has gone ahead.

"This makes the whole issue clear. The new plan might be all right during this administration. But Mr. Roosevelt won't always be President.

"We hear rumors everywhere that these

commissions are going to be absorbed into the departments. I do not want to see anything done that will take away either their importance or their independence."

Senator Norris also felt that the General Accounting Office had acted as a successful check upon Federal auditing and possible irregularities in executive expenditures.

Arkansas

Utilities Tribunal Bill Becomes Law

CREATION of a fact-finding tribunal to investigate utility rates was assured on March 3rd, when Governor Futrell signed Senate Bill No. 331, introduced by Senator Bailey of Pope county and Representative Thorn of Poinsett county, according to a news item published in the Little Rock *Gazette*. The measure carries an emergency clause and the corporation commission may name the members of the investigating body immediately, subject to the approval of the governor. The governor's approval of the measure had been anticipated because of a message he sent to the legislature saying that he would sign the bill "if passed in its present form," which was done.

An attorney will head the new tribunal, according to the *Gazette*, and the board will operate under the corporation commission. The act provides for the appointment of an accountant and an engineer as members of the tribunal and employment of any others deemed necessary. Utilities corporations will be taxed $2 per $1,000 of gross revenue to support the organization.

Under the new law, the tribunal will have authority to investigate the rates of any utility upon request by a city council. The investigation will be directed primarily toward fixing the actual investment value of the utilities corporations and on this valuation they will be allowed to charge for their services at rates that will earn the return authorized by law. The measure was opposed by the utilities while it was under consideration by the legislature. A provision that evidence obtained by the corporation commission would be conclusive was attacked as unfair to the utilities.

While the tribunal is authorized to participate in law suits, it is not authorized to institute rate litigation, this authority remaining with the city councils. The commissioner's duty will be to present to the courts, after rate litigation is started, its findings regarding the utility company involved.

California

Senate to Investigate Utility Rates

A SAN FRANCISCO dispatch to the *Wall Street Journal* brings news that the California senate has ordered an investigation into the California Railroad Commission's utility rate activities.

Clyde L. Seavey, president of the commission, in a letter to the senate stated: "If it is your desire that we proceed at once to attempt drastic reduction of rates under circumstances, we are prepared to do so." He added, however, that the commission already faces attacks in the Federal courts for orders of the last two years. These are the Pacific Lighting Cases. He suggested that the commission regard it as more feasible for the state to reduce return of utilities by raising gross receipts tax, since the "commission is in a much better position to prevent rate increases than to reduce rates." The gross receipts tax proposal, mentioned by Mr. Seavey, which has thus far been unsuccessful in the state senate was for the purpose of raising the tax from about seven to eleven per cent.

The railroad commission recently reported practically all utilities of the state as earning below the commission's estimate of reasonable return on the commission's valuation. Recent reports show that major companies earned only a little more than earned common dividends in 1932.

Senators Bradford Crittenden, of Stockton, Charles H. Deuel, of Chico, and Nelson T. Edwards, of Orange, were named by Lieutenant Governor Frank F. Merriam on March 10th as members of a special committee to investigate public utility rates. The original resolution authorizing the investigation was introduced by Senator Crittenden. Senator Crittenden claimed there is need for such an investigation because public utility rates, particularly those of gas and electric companies, have increased while the cost of other commodities have decreased.

With respect to the proposals for increasing gross revenue taxation of utilities, a news item in the San Diego *Tribune* states that the San Diego Consolidated Gas & Electric Company in its official organ, *"The News-*

Meter," warns that if certain measures pending before the state legislature are enacted into laws, consumers can expect a raise in gas and electric rates. The company's organ also stated that if added taxes are imposed on the company, the $87,000 being spent for making a revaluation of the company's properties would be wasted.

Rural Power Consumers Press Rate Fight

REPRESENTING by a roll-call tally, approximately $1,500,000 in annual agricultural power consumption, a committee of some twenty-five rural power consumers decided on March 2nd to carry on an aggressive campaign for a reduction of from 20 to 30 per cent in the present agricultural power rates in the San Joaquin valley, according to a news item in the Fresno *Bee-Republican*.

A later item in the same newspaper stated that either a voluntary reduction in agricultural power rates by the San Joaquin Light & Power Corporation must be made or a valley-wide power boycott will go into effect as the result of an ultimatum decided upon by the aforementioned committee of twenty-five agricultural consumers.

Connecticut

Utility Leases Electric Ranges

WITH the problem of increasing the sales of electricity engaging the attention of public utility operators, the Hartford Electric Light Company has evolved a plan for leasing electric ranges to its customers which has been attended by immediate success, more than 500 ranges having been leased in the first ten days of the plan, according to the New York *Times* of March 19th.

The Hartford Company gives credit for the underlying range rental idea to the experience of British companies in renting electrical equipment. Little or no experience with range rentals on this continent was available, but an exhaustive market analysis in 1932 did show conclusively a widespread desire for electric cooking.

A formal plan was offered customers on February 1st, in the form of "rent an electric range for 30 cents a week, payable monthly with your electric bill." Free installation was offered to the first 500 applicants. The plan coincided with the fiftieth anniversary of the company's formation. More than 594 applications for free wiring and more than 500 signed rental orders were obtained in ten working days, and the offer was closed on February 11th.

District of Columbia

Commission Has Successful Rate Record

CONSISTENT reductions in rates have been brought about for both the gas and electric companies serving the city of Washington by the public utilities commission of the District of Columbia since its organization in 1925. A slight reduction has been made in the rates of the telephone company and higher rates have been obtained for the fourth utility—the street railway companies—over the protests of the commission.

Figures showing these changes in rates by years were prepared by James L. Martin, executive secretary of the commission, and were made public on March 8th by William A. Roberts, special assistant counsel for the commission.

The most pronounced cuts have been made in electric rates during the operation of the consent decree, recently modified. Since 1925 the domestic electric rate has fallen from 7.5 cents per kilowatt hour to 3.9 cents per kilowatt hour, one of the lowest domestic residential rates in the country. Further reductions are anticipated.

Kentucky

City's Plant Bond Issue Held Valid

THE Kentucky Court of Appeals on March 10th affirmed a decision of Circuit Judge H. Church Ford that a bond issue of $150,000 voted in 1930 by the citizens of Paris for the construction of a municipal electric light plant does not create a debt in contravention of the limit fixed for municipalities by the state Constitution.

The Kentucky Utilities Company instituted action to prevent the bond issue on the ground that it exceeded the constitutional limit, contending that a debt of $400,000 on the Paris waterworks plant should be taken into account. The court, however, held that this obligation is not a direct obligation of the city, being payable only from revenues of the electric light plant, if, as, and when earned.

Maryland

World's Smallest Water Plant in Rate Hearing

WHAT probably is the world's smallest public water supply system, located in Baltimore county, has been brought to the attention of the public service commission in a complaint by George Eberhart, of Woodlawn, that the service supplied him by his brother, Henry, is bad and the rate high. The commission was surprised to learn of the existence of the system, which has been operated since 1916, and set March 27th for a hearing, when it will be decided whether the commission will exercise its jurisdiction over public utilities in the case of such a lilliputian plant.

One of the commission's representatives recently visited the water system and gave a report on it. The source is a 60-foot well, connected with a 1,100-gallon tank by a 400-foot 1-inch pipe line. From the tank extends a 400-foot section of ¾-inch pipe, to supply water to four customers. Six greenhouses and three other houses are supplied by another line of ¾-inch pipe extending about 825 feet.

The complainant claims that the charge for his brother's service is $30 a year, whereas the system of the metropolitan district of the county charges only $12 a year. As a result of the disclosure, the water supply system may be required to submit annual reports to the public service commission of the state.

Minnesota

Fifty Per Cent Phone Rate Cut Dictated by Law

A ST. PAUL dispatch to the *Wall Street Journal* states that a 50 per cent reduction in telephone charges within the Twin Cities was recommended by the telephone and telegraph committee of the house, when it voted approval of a bill by Representative G. W. Johnson, of Duluth, which would fix maximum monthly rates for telephone service for the entire state. The rate for Duluth would be slightly higher than that for St. Paul and Minneapolis. Maximum rates as named in the bill are $5 a month for one-party line service; $3.50 for two-party line service; and $2.50 for one-party residence lines, and $1.75 for two-party residence lines.

Provision, however, was made in the bill that if any of these schedules is deemed unreasonable or confiscatory, the Minnesota Railroad & Warehouse Commission may readjust them to a reasonable level. Burden of proof in this case is placed on the telephone company, reversing the process now operating under existing law. A news item in the St. Paul *Pioneer-Press* claims that all telephone concerns of less than $500,000 valuation and with not more than $150,000 gross earnings a year are exempted from the application of the law.

Mississippi

Full-powered Commission Urged

A RECOMMENDATION of the joint committee of twenty-five on reorganization, created by the Mississippi legislature, advocated the creation of a public service utilities commission to fix rates and regulate the operation of all public service utilities, the personnel to be named by the governor. The present railroad commission would retain power over railroads and other corporations now under its jurisdiction until the terms of the incumbents expire on January 1, 1936, when the latter office would be abolished and its duties transferred to the utilities commission, according to the Summit *Sentinel* of March 9th.

Missouri

Southwestern Bell Defends Its Present Rates

IN the midst of widespread agitation throughout Missouri for reduction of rates for public utility services, the Southwestern Bell Telephone Company has incorporated in its annual report, issued March 13th, its reasons for keeping telephone rates at their present level, according to a news item in the St. Louis *Star-Times*.

The report, accounting to stockholders for operations during 1932, shows a heavy drop in business, as compared to the year before, when it suffered the first slump in its history. After reporting a decline of 12.3 per cent in gross operating revenue and a drop of 13.9 per cent in net earnings, the company, in a statement signed by President A. B. Elias, pointed out that under regulation the telephone business is restricted even in times when others are earning large profits, to receiving little more than the cost of labor, money, and other necessary expenses of operation. The fact that telephone rates were held at a low level during prosperity, the statement continued, means that in fairness they should not be made still lower in times of depression. Under this policy, the company claims that it has never sought nor earned a speculative return, but that it has been enabled to build into its business a stability which has been to the mutual advantage of customers, employees, and the owners of the property, and that such a stability in the telephone company's rate policy should be continued.

Nebraska

Tax May Raise Municipal Plant Rates

THE price of gas to householders and other small consumers must be raised 12 to 17 cents per thousand cubic feet and the price of water 5 cents per thousand gallons, if the legislature provides for the taxing of Omaha municipal gas and water plants, Ralph G. Coad, utilities director, and T. A. Leisen, general manager of the utilities, stated in a meeting of the utilities board on March 1st at Omaha. Director Coad stated that if the legislature should pass a pending bill providing for the taxation of municipal plants, the utilities district will have to pay approximately $600,000 a year in taxes, and that the only effect of such a law would be to make the small consumer of gas and water pay the tax. Director Coad said that he and the other officials of the municipal utilities had urged the defeat of the bill before the senate committee, but that he believed it might pass the senate. He suggested to the committee that the proposal to tax the municipal plants should be deferred as to the Omaha plants until Omaha had paid off its bonded indebtedness. In such an event, Director Coad explained that the Omaha plants could pay taxes without raising the cost of gas and water.

Board members were planning to go to Lincoln to appear before a legislative committee in opposition to the bill prohibiting all public utilities, whether publicly or privately owned, from selling appliances, according to a news item in the Omaha *Bee-News* of March 2nd.

New York

Syracuse Council Opposes Rate Suit

WARNING that an action before the public service commission to obtain a reduction in gas and electric rates would cost the taxpayers "at least $50,000," and the Syracuse Lighting Company another $50,000, was passed on to the Syracuse council on March 4th by Public Safety Commissioner Rapp from Corporation Counsel Robertson. The corporation counsel was also of the opinion that the public service commission had adequate facilities to start an inquiry into the Syracuse gas and lighting rates.

Utilities Fight Inquiry Tax Bill

REPRESENTATIVES of utility companies appeared before a joint meeting of the public service committees of the senate and assembly on March 15th to oppose a measure carrying out Governor Lehman's budget recommendation to levy the cost of rate inquiries

and other regulatory proceedings on the utilities. The measure was taken up with a series of proposed amendments to the public service law, and after the spokesmen for the utilities had voiced their opposition it was announced that the committees would hold continued hearings on the measure.

Arthur G. Peacock, representing the Interborough Company; M. B. Hoffman of the Brooklyn-Manhattan Transit, and Edward A. Maher, Jr., representing the Third Avenue Railway, all told the committee that if the expense of conducting investigations for rate cases were added to the operating costs under the 5-cent fare in New York city "it would put the transit corporations out of business." Frank A. McNamee, Jr., representing the New York Central; Irving Griswold, of the New York Telephone Company, and Ross Lovell, of the Elmira Gas and Electric Company also opposed the bill.

The measure was introduced by Senator Burchill and Assemblyman Livingston after Governor Lehman had declared in his budget message that compelling the utility companies, like the insurance companies, to pay the cost of investigations would save the state about $750,000 a year.

Fair Rate League to Fight Utility Charges

BOROUGH President George U. Harvey of Queens announced the formation on March 16th of the Fair Rate League, a city-wide organization to campaign for lower public utility rates. The league is a successor to the Greater New York Consumers' League, formed some months ago, according to Mr. Harvey's statement in the New York *Times*.

Mr. Harvey will be honorary president of the Fair Rate League, Fred W. Hotchkiss, of the Bronx, president, and Howard S. Guttman, of Brooklyn, executive secretary. Mr. Harvey contended that there are excessive rates being charged for gas, electricity, and telephone service. He said the league would "take up the cudgels in behalf of the small consumers, whom the public service commission has deliberately ignored."

North Carolina

New Utilities Law Disappoints Reformer

KEEN disappointment in the bill passed by the state legislature appointing a single commissioner of public utilities in place of the present corporation commission was expressed on March 11th by C. A. Mees, president of the Fair Utility Rate Association, which played a large part in agitating for legislative revision of the regulatory set-up in this state. Mr. Mees declared that the only good aspect of the bill was that it showed that the legislature could abolish the commission, but aside from that it was in his opinion a "backward step," according to the Charlotte *Observer*.

The Fair Rate Association spent several months obtaining thousands of signatures to petitions seeking complete change of the form of utility regulation in North Carolina. Strict supervision and regulation was sought for utility companies. Mr. Mees stated that his association had no money to continue its work, but that it hoped future sessions of the legislature would enact a regulatory law which would give to North Carolina a modern regulatory set-up in line with the other states.

Ohio

Municipalities Fight Bond Restriction

CHARGES that the utility lobby was working to have enacted the Ward bill which would increase from 60 to 65 per cent the vote needed on all bond issues, including those for municipally owned utilities, were made by James T. Keenan writing in the Cincinnati *Post*. Mr. Keenan also charged that the utility lobby had exercised influence on the house when that body had adopted the Ward bill after defeating an amendment by Jerome Curtis, of Cleveland, which would have reduced to 55 per cent the vote needed to adopt bond issues for municipally owned utilities.

Municipalities are opposed to the Ward bill because it would make more difficult their acquisition and operation of municipally owned utility plants. Mr. Keenan also pointed out that the Ward bill, if adopted, would make it difficult for cities such as Cleveland and Columbus, which have well developed municipal electric light plants, to float bond issues for their extension.

Proponents of the bill claim they wish to

protect property holders from increased taxation rates resulting from bond issues. Those who favor the municipal utilities claim that they are self-supporting.

Bar Association Volunteers Rate Fight Aid

WHILE the Akron city council was renewing its plea to the Ohio Edison Company for a further voluntary reduction in rates, the Akron Bar Association meeting on March 4th was adopting a resolution pledging services of its members to carry on the city's legal rate battle without charge, according to the Akron *Beacon Journal*. The bar group accepted the resolution offered by Attorney Murray Parker, unanimously. By its terms, a general committee of from nine to fifteen members would serve in advisory capacity to city officials in rate litigation before the public utilities commission or in the courts, and a special subcommittee of from three to five members would be available as consultants for the city's legal staff.

Oklahoma

Fight Opens on Muskogee Phone Rates

MORE than 3,100 Muskogee telephone patrons have appealed to the state corporation commission demanding that the rates charged by the Southwestern Bell Telephone Company be reduced by at least 40 per cent and threatening wholesale discontinuance of telephone service unless this is done, according to a dispatch to the *Wall Street Journal*.

Patrons in their petitions declared they would quit using telephone service if the charge for business phones is not reduced from $5 to $3, and the charge for residence phones from $3 to $1.50, or if a reasonable reduction cannot be agreed to.

Telephone companies will not be permitted to make an extra charge for hand sets, if a bill recently introduced into the state legislature should be adopted, continues the *Wall Street Journal* news item. The bill requires telephone companies to make a uniform charge for telephone service, regardless of the type of telephone provided. Another bill would require a state permit and payment of a $10 fee on each public pay telephone.

Oregon

Special Phone Tax Goes into Effect

MORE than a year ago, the Portland city council passed an ordinance taxing all utilities operating without a franchise 5 per cent of their gross revenues, which was to take effect January 1, 1933. On March 1st, Commissioner J. E. Bennett notified the Portland city council that the city expects the local telephone company to pay 5 per cent tax to the city in lieu of a franchise. The first quarterly payment will be due May 1st.

Whether the telephone company will pay this tax without a fight has not been determined, as no official demand has yet been made upon the utility. While the telephone company has a revocable permit to operate, it was expressly provided in its acceptance that this is not a franchise, and it will be penalized under the ordinance. The company formerly paid a 2 per cent tax under its permit.

Pennsylvania

Pinchot and King Break—Commission Control Hangs in Balance

AS an outgrowth of the Pennsylvania senate investigation of public utilities, the long-standing political friendship of Governor Pinchot and Dr. Clyde L. King, chairman of the state public service commission, was broken during the week of March 13th and a series of communications between the parties followed Dr. King's testimony to the effect that an investigation of the personnel of the present commission was in his opinion unnecessary.

Declaring that Dr. King had created the widespread impression that he was against continuing the investigation and was for shielding the utilities, thereby putting him-

self squarely on the side of the utilities and against the people, Governor Pinchot said:

"Dr. King's usefulness as chairman is at an end. If I could withdraw his nomination from the senate or command his resignation, I would."

To these charges Dr. King replied at length, refusing to resign. "He (the governor) means that my usefulness to him for his own personal political advantage is at an end," he stated. "He demands that I make a political shambles of this commission for his personal political advantage. He insisted that I do the muckraking and misrepresent the facts. He denies to others the square deal he has paraded when it is not to his own advantage. Such hypocrisy as this must speak for itself."

According to the *Electrical World*, the governor and Dr. King quarreled over the testimony the latter gave before the senate committee. Governor Pinchot's attacks on public utilities have been among his principal political issues.

Dr. King's name is now before the senate for confirmation or rejection, and reports indicate that Governor Pinchot is facing a fight for control of the commission, although he has appointed five of the seven members of the body. As the situation stands at present, three members of the commission have declared for the governor's policies and four members have not formally put themselves on record.

Another development of the week was the acceptance by the investigating committee of the resignation of Oliver K. Eaton, of Pittsburgh, as chief counsel, and J. J. Levy and J. C. Ganey, associate counsel, who charged the inquiry was not being carried on thoroughly. Franklin S. Edmonds has been appointed chief counsel to succeed Mr. Eaton, to the approval of the Pinchot faction.

In the Philadelphia *Bulletin* of March 10th, there were made public copies of letters on the utilities question which preceded the break between Dr. King and Governor Pinchot. One letter was addressed to Oliver K. Eaton, signed by Dr. King. It stated:

"The commission has not been able since October 1st to institute formal rate proceedings because of our very limited staff, and because so much of the time of our staff has been taken in answering queries and compiling information required by the chief counsel of the senate Utility Investigating Committee (Mr. Eaton)."

The letter was dated March 7th, the date the senate refused to accept the resignation of Mr. Eaton, and two days before Governor Pinchot charged that Dr. King had "ended his usefulness." The letter to Mr. Eaton continued:

"You asked us the amazing question as to what companies are now charging excessive rates in this state. This is the same as asking us to pass upon those cases in advance of hearing. I think all will agree with me that no lawyer of standing in this commonwealth would think of asking a court to pass upon pending cases before it prior to a final decision.

"Such procedure is clearly unethical. . . . The commission welcomes any and all complaints and will continue to follow those complaints up vigorously, as we have, but prejudge its decisions we will not."

Governor Pinchot defended the course pursued by Mr. Eaton declaring "Mr. Eaton wanted a real investigation and was unable to get it."

In a news item in the Philadelphia *Public Ledger* of March 16th, Mr. Eaton published a statement attacking Dr. King's record. After accusing Dr. King of ignorance and incompetence, Mr. Eaton's statement continued:

"Moreover, he undertook, under oath, to say there was no reason, so far as he knew, for further investigation; in effect, he certified to the fitness for office and proper conduct in office of all the present commission despite the fact that proceedings in two of our courts have been brought by one of the commissioners to restrain the enforcement of a subpœna issued by the committee."

In the meantime, the Dauphin county court has issued a rule to show cause why the answers filed by Mr. Eaton to the injunction proceedings now pending against the committee in the local court should not be stricken off the record.

South Carolina

Utility Commission Division Wants Expansion

FIVE legislative measures, one of which would change the assessment for the operation of the electric utilities division of the South Carolina Railroad Commission, were proposed for introduction in the general assembly by the commission to the senate judiciary committee on March 1st.

Irvine F. Belser, special counsel for the division, outlined the aims of the commission's proposals to the committee. One proposal would allow the levying on electric utilities of one half of 1 per cent of gross revenue which would amount to about $85,000 a year for the support of the electric division.

A second proposal would confirm and validate an order of the commission requiring the Southern Bell Telephone & Telegraph Company to reduce its rates by 20 per cent. A third proposal would allow new schedules for electric, telephone, and gas rates, to become effective only after preliminary hearing, with authority for the commission to suspend if it deemed further investigation warranted.

The two other bills proposed would put telephone companies and gas companies under similar supervision as electric utilities were put in the 1932 regulatory act. Regulatory costs would be paid by assessments, on the gross receipts of the respective utilities.

Vermont

Utilities Oppose Rate Change Law

OPPOSITION to five bills having to do with service, demand, and minimum charges of public utility companies was expressed on March 3rd before the house committee on conservation and development by representatives of electric and telephone companies. Officials of several municipal plants and small telephone companies also joined in the opposition. Arguments were centered on the bills relating to the service, installation, and reconnection charges of telephone companies, and the bill to reduce minimum and demand charges for power and light.

Representative O. D. Mathewson, of Lyndon, speaking for the municipal plant of that town, opposed the rates proposed in the bills relating to light and power, pointing out that such matters were within the power of the public service commission and that there was, therefore, no necessity for formal legislative enactment.

Homer L. Skeels, of Montpelier, director of the Green Mountain Power Corporation, defended the service charge as part of the general rate structure of electric and gas companies, resulting from the "work of investigation extending over a quarter of a century, done by experts." Mr. Skeels observed that many other public utilities had been compelled to meet the same conditions as their consumers in coping with the economic depression.

West Virginia

Utility Threat Voted in House Resolution

A MOVE to take over the public utilities of the state of West Virginia and operate them "in the name and upon behalf of the people of West Virginia" was initiated in the legislature on March 8th, when the house unanimously passed a resolution taking cognizance of the "right of eminent domain" section of the state Constitution.

The resolution was intended as a gesture only, according to the Charleston *Gazette*, since it was freely admitted that it had no chance of approval in the senate. When it was reported to that body, action was deferred until March 9th after a motion had been made by one senator to refer it to the "medicine and insanity committee."

Introduced by Delegate J. L. Marsh, of Ohio county, the resolution recited that "it appears that the utility companies and other corporations of the state are using every power within their means to prevent the authorized house investigation from delving into their fiscal affairs, lobby activities, and other workings."

The resolution added that "the House of Delegates deems such interference and stricture detrimental to the welfare of the state of West Virginia and the impoverished taxpayers thereof" and that the "main object of the House of Delegates, herein assembled, is to protect the people of our great commonwealth, and to relieve them of the unfair taxation burdens under which they now labor."

In support of his resolution, Delegate Marsh took the floor to assail the Senate and the utilities, declaring that "it is time we take from the utilities this usurping power." Delegate R. B. Goodwin, of Jackson county, said he thought the resolution was "useless," advising the sponsor of the move that if the latter was correct in his assertion that the utilities own the government they would be unwilling to take their own property away from themselves.

W. H. Norton, of Cabell county, chairman of the house judiciary committee characterized the resolution as "harmless" and predestined to defeat in the senate, but added that he saw no reason why additional time should be taken up fighting it. No negative votes were heard when the speaker put the question.

The Latest Utility Rulings

Stormy Oklahoma Gas Case Results in Rate Reduction

FOLLOWING close upon the election of former state Governor Jack Walton, to succeed former Commissioner Childers, the Oklahoma commission by a vote of 2 to 1 has finally been able to secure sufficient agreement among its members to dispose of the natural gas rate case involving the Lone Star Gas Company, and its affiliate, the Community Natural Gas Company, which furnishes service to 26 towns and cities in the state of Oklahoma. The case, which was commenced in December, 1930, has twice been the subject of unsuccessful attempts on the part of the commission to muster a quorum of determination—Chairman Walker even publishing "proposed reports." The recent majority report was signed by Chairman Walker and Commissioner Walton. A vigorous dissenting opinion was registered by Commissioner Hughes.

The commission's order reduces the rate for domestic consumption paid by the Community Natural Gas Company to the Lone Star Gas Company at the city gate in the towns and cities served by the Community Natural Gas Company within the state of Oklahoma from 40 cents to 30 cents per thousand cubic feet. The order further provides that this reduction of 10 cents should be passed on to the consumers of the Community Natural Gas Company and should be reflected in the domestic rates, at the burner tip, to the full extent of 10 cents per thousand cubic feet of gas.

The commission found that a sufficient community of interest exists between the Lone Star Gas Company and the Community Natural Gas Company as to permit the treatment of the service rendered by the two corporations as a single service both as to the cost of gas at the city gate and the charge made at the burner tip to the domestic consumers, and to warrant the commission in assuming jurisdiction in regulating such service.

The commission found that the present fair value of the Lone Star Gas Company's property for purposes of fixing rates does not exceed $38,000,000, and that the replacement cost of such properties at prevailing construction prices and methods would not exceed the sum of $30,500,000.

Upon the rate base so fixed, the commission found that a net return of 6 per cent a year, and a depreciation allowance of 3 per cent a year was adequate. It was also held that the operating expenses of the Lone Star Company were excessive and could be materially reduced without impairment of service. Excessive salaries paid to officials, excessive sums paid for advertising, and expenditures for "lobbying" and donations were particularly declared to be improper charges to operating expenses.

The opinion also held that in determining the proper rate to be charged for gas at the city gate, as well as the proper charge to be made for gas at the burner tip, the commission must recognize the increased purchasing power of the dollar owing to falling prices, and the nation-wide reduction of wages and other economic changes. It must take cognizance of the fact that the same net income of physical dollars would in reality result in a greatly increased income to the utility, so far as the actual worth of money is concerned. It said that the commission owes a duty to the public utilities involved to adjust rates in line with the new purchasing power of the dollar quite apart from the consideration of earning a set rate of re-

turn on a rate base determined by any theory of property value, as it was believed that the value of service rendered by a public utility to the public is a factor of co-equal importance, with the right of the utility to earn a fair return on its investment. The amount of the reduction was estimated to be about $60,000 a year.

Commissioner Hughes, in his dissenting opinion, criticized the haste in which the majority order had been prepared, claiming that the order was handed to him shortly before noon on the day upon which it was signed by a majority, and since it consisted of 59 single-spaced, typewritten pages "covered," he asserted, "with citations of authorities, probably some of which have no application, and calculations, very few of which are found in the record," he did not have sufficient opportunity to examine or deliberate upon the proposed order. Commissioner Hughes further accused the majority of ignoring without reason pertinent testimony and evidence, of violating binding legal precedent, and of fixing inadequate allowances for value, depreciation, and return. He concluded that he could see "no benefit to the gas users of the state of Oklahoma by fixing and establishing a rate which, upon its face, was illegal and void and for that reason may never go into effect."

Chairman Walker, in a special concurring opinion, replied that "a commissioner or a judge who sacrifices his honest conviction for fear of reversal is but a toll of time-servers." *Re Lone Star Gas Co. et al.* (*Cause No. 10,777, Order Nos. 6201, 6202*).

Commission Declines Jurisdiction over Wholesale Gas Rates

THE Colorado commission has dismissed for lack of jurisdiction an investigation instituted on its own motion into the basic costs of natural gas as founded upon the so-called "gate rates" of the distributing companies of the state, principally the Public Service Company of Colorado. The investigation resulted from a proposed reduction of rates to the domestic consumers, in which the Public Service Company asserted that such rates were based upon the "gate rate" charge which the company had to pay for its supply. This gate rate was 40 cents a thousand cubic feet and formed the basis for domestic charges in Denver.

When the commission instituted the investigation, the Colorado Interstate Gas Company refused to acknowledge the commission's jurisdiction and declared that it was not engaged in intrastate commerce and that, therefore, the commission could not inquire into any phase of its rates.

In the decision handed down March 4th, the commission placed natural gas operators in the state into three classifications: (1) The supplying of distributing companies with gas to be later sold to domestic consumers; (2) the supplying of gas directly to industrial consumers by interstate pipe-line companies; (3) the furnishing of gas from local distributing systems to industrial consumers.

The commission then ruled that it did not have jurisdiction as to the first two classes of service because such operations were not in intrastate commerce. Regarding the third class, the furnishing of gas from local distributing systems to industrial consumers, the commission stated:

> "The question is whether this business by the distributing company or the pipe-line company is intrastate business. We find it is the business of the pipe-line company and is intrastate business, therefore within the jurisdiction of the commission on rates and service."

The commission's order requires filing of the rates charged industrial consumers in towns and cities other than

home-rule cities. The commission decided against the contention of the pipeline company that it was not a public utility. The opinion stated on this point:

"The ground for this decision is that in spite of the claimed power to reject business of some customers and to fix definite terms for different customers, the company is holding itself out to serve the public generally, if it can make proper terms with the various people seeking the service."

Re Colorado Interstate Gas Co.

No Penalty Allowed for Unauthorized but Unprofitable Station Abandonment

ALTHOUGH a Mississippi statute imposes a penalty upon any railroad company for discontinuing a depot without approval of the state commission, no such penalty can be imposed where it can be shown that the company was economically justified in such unapproved discontinuance, is the ruling contained in a recent decision of the Mississippi Supreme Court disallowing a suit brought by the railroad commission of that state to recover a statutory penalty for the unauthorized discontinuance of the railroad depot at Lawrence, Mississippi. In the course of the suit, the company introduced clear evidence that the station had been losing money for more than a year and would probably lose more if continued in service. The court said it would be manifestly unfair under such circumstances to impose a heavy penalty, and at the same time announce that the railroad commission ought to give its consent, thus technically requiring a penalty to be paid when no wrong had been done the people of the state in the particular act upon which the conviction rests, since a common carrier cannot be compelled to carry on its business, or a branch thereof, at a substantial loss. The court concluded that the burden of the penalty could not be imposed with any more assurance than could the maintenance of the depot be required under such circumstances. *Yazoo & Mississippi Railroad Co. v. Mississippi Railroad Commission.*

Roxy Theatre Electricity Not Cut Off for Receiver's Bill

ON May 18, 1932, Harry G. Kosch was appointed creditors' receiver of the Roxy Theatre in New York city, and as such he ran up a bill for electric service for nearly $5,000 from the New York Edison Company. After about six weeks, however, the Continental Bank & Trust Company filed a bill to foreclose a mortgage and obtained an order allowing an extension of receivership during the foreclosure proceedings. Mr. Kosch was directed to close his books on June 30, 1932, as the creditors' receiver and to hold all rents and profits thereafter as the receiver in the foreclosure proceedings. In his subsequent capacity, Kosch applied for a continuation of electric service but the Edison Company threatened to discontinue unless the prior bill was paid. After continuing the service under stipulation between the parties, the utility company filed its petition in the Federal court for leave to shut off service or for an order directing the receivers to pay the balance due. The lower district court authorized the utility to discontinue service within ten days if the bill should remain unpaid. The circuit court of appeals reversed the lower court's order, however, stating that there was no authority for such an order in §§ 12 and 15 of the New York Transportation Corporation Law,

which governs the right of utilities to disconnect service for unpaid balances. The court's opinion stated:

> "The dispute is whether the extension of the receivership to the foreclosure suit created a change in the 'occupant' of the premises, or in the 'person supplied,' within the meaning of the foregoing sections of the state statute. The district court thought not, saying that the possession remained that of the court throughout. Had the original receiver been displaced and a new one substituted it would hardly be doubted that the latter would be another 'person' under § 15, and a different 'occupant' under § 12. Yet the legal effect is substantially the same when the former receiver is continued and the receivership extended, as if another person had been appointed. The expense of operation by a creditors' receiver, or a receiver for a junior encumbrance, cannot be made a lien superior to that of the prior mortgagee who has not acquiesced. By analogy it would seem that the expenses incurred by a creditors' receiver should not impair the possession which the mortgagee is entitled to take through a foreclosure receiver, nor burden it with debts created for the benefit of junior interests."

The higher court, in reversing the district court's order, indicated that another order might be entered, if necessary, enjoining the electric utility from entering the premises to shut off its current. *Kane et al. v. Roxy Theatres Corp.*

Doherty Security Permit Is Ordered

THE Kansas Supreme Court held on March 11th that Cities Service Company and its fiscal agency, Henry L. Doherty & Company, must obtain a permit in order to sell securities of the former concern in Kansas. The court affirmed the decision of the Shawnee County District Court granting an injunction against the sale of Cities Service securities sought by Roland Boynton, state attorney general, acting on relation of H. W. Koeneke, state bank commissioner.

It held a proviso in the state securities law that securities of a holding company owning securities of public service utilities shall not be sold without a permit did not contravene the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution, nor the guarantees of the Bill of Rights of the state Constitution.

In another suit decided by the court in the same opinion, it ruled unconstitutional a provision of the securities law under which Carl Newcomer, special assistant bank commissioner, issued an order without hearing July 3, 1931, designed to bar sale of Cities Service securities except first preferred in Kansas. It held that Newcomer acted under a provision of the law which conferred "arbitrary power" upon the commissioner.

The ruling means, Mr. Newcomer said, according to an Associated Press dispatch to the *Evening* (Washington, D. C.) *Star*, that Cities Service would be required to file financial statements, which, if found satisfactory, would result in the issuance of a permit. Robert Stone, attorney for Cities Service, announced that a petition for rehearing would be filed.

A subsequent Associated Press dispatch from Topeka, on March 17th, stated that Henry L. Doherty & Company had been granted a temporary permit to sell $10,000,000 of Cities Service Company securities in Kansas. *Re Henry L. Doherty & Co.*

Submetering of Electricity Forbidden in Washington, D. C.

THE court of appeals of the District of Columbia has sustained the right of an electrical utility to refuse to sell power at wholesale rates to patrons who submeter and resell it to others at retail rates. The decision re-